

An Ethical Modernity?

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An Ethical Modernity?

Hegel's Concept of Ethical Life Today

Edited by

Jiří Chotaš and Tereza Matějčková



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Introduction

Jiří Chotaš and Tereza Matějčková

1 Do We Know What Modernity Is?

Modernity has neither a beginning nor an end. To be precise, we do not know when the period started and when (or if) it ended. Are we modern? Were we ever modern? And is “post-modernity” only a variation of modernity? These questions remain open. Just as the phenomenon of modernity is elusive, so is its definition. Yet, elusiveness never prevents thinkers from offering definitions. On the contrary, the very elusiveness is what incites these creative attempts. One of the most famous definitions of modernity does not originate with a philosopher but a poet. Baudelaire says that “modernity is the transient, the fleeting, the contingent; it is one half of art, the other being the eternal and the immovable” (Baudelaire 1972, 403). This understanding of modernity captures more than its fleetingness; it shows that anything with the tag “modern” has a built-in dimension of transience and finitude, so to speak. Taking inspiration from Baudelaire, we might arrive at a minimal—and by no means unproblematic—definition of modernity: Modern is that which is other than tradition, that which even opposes tradition.

Baudelaire’s definition has proven to be significant not only within its content but equally for the fact that it was a poet defining modernity. First, it is well-known that with their emphasis on expressionism, artists helped create what we today call the modern world, at least as much as scientific discoveries and market economies.¹ Second, that it is a poet who reflects on modernity, on its poetic background, is telling in yet another sense. In many conceptions, most pronouncedly in Luhmann’s, modernity is almost a synonym for self-reflectivity. In Baudelaire’s definition, we encounter a search not to understand one’s time alone but, above all, oneself. This reflectivity bending towards oneself is simultaneously constitutive of the self. Thus, modern men are “free artists of their own selves” (*Aesth.*, 1228), as Hegel puts it, drawing on the depiction of Shakespeare’s characters.

Hegel reflected on many phenomena related to modernity and, above all, on a new form of the self and a novel form of society. Both of these “discoveries” are fueled by a new self-understanding of the human being, and it is this very

1 A proponent of this thesis is Charles Taylor (1989, 368–390).

self-understanding that transforms individual histories and world politics. Accordingly, modernity is less as a certain period of time² than as a specific type of self-relation of individuals and societies.

Etymologically, the word “modern” is derived from the Latin root *modo*, meaning “now”: in other words, “modern” pertains to the present and, thus, we find that a link to time is inherent to modernity. Not only is modernity often understood as a specific period, it carries a new understanding of time with itself. In fact, modern society captures itself through distancing itself from the past. Thus, it identifies with a time-dimension.³ We might even claim that it is a period when the “now” is (re-)discovered on the social level. In light of this, Hegel’s philosophy is essentially modern, since he takes the endeavor of philosophy to be a reflection of the present time: “[P]hilosophy too is its own time apprehended in thoughts” (*PR*, 15).

Of course, this remark can be interpreted in various regards. For us, it means that the modern philosopher does not look back at the past as a source of exclusive authority. The authority is in the “now.” Hegel immediately adds that it is also not the future that should be in the philosopher’s focus.⁴ However, since the present is taken to be a new beginning, a new departure, the future comes into view nonetheless: It is an opening to the future, the moment from which progress starts. The modern “now” is not Aristotle’s eternal “now”: It is a “now” that connotes the new. Accordingly, in the Preface to the *Phenomenology of Spirit*, Hegel’s tone is almost solemn: “Besides, it is not difficult to see that ours is a birth-time and a period of transition to a new era. Spirit has broken with the world it has hitherto inhabited and imagined, and is of a mind to submerge it in the past, and in the labour of its own transformation” (*PS*, 6).

By defining philosophy in this manner, Hegel does justice to yet another meaning of the term “modern.” Often in the use of William Shakespeare, who epitomized modernity for Hegel,⁵ it denotes what is “ordinary.” Indeed,

2 Although this strand of thought is certainly present in Hegel as well. For Hegel, modern is the period around 1500 with its epoch-making renaissance and reformation. Yet, we should not lose sight of Adorno’s thesis put forward in *Minima Moralia. Reflections on a Damaged Life*: “Modernity is a qualitative, not a chronological, category” (Adorno 2005, 218).

3 See Luhmann (2006, 14).

4 Of course, this does not mean that the future is not important for the moderns, it is in a, so far, unprecedented way. Yet, Hegel is keen to stress that the present should neither be overwhelmed by the past nor devalued by a future awaited.

5 From this too, we learn how much the question when modernity starts is contested. Various authors, such as Niklas Luhmann, consider the renaissance as the beginning of modernity; others, as Lyotard (1984), associate it with narratives typical of Enlightenment thought; in these narratives “the hero of knowledge works toward a good ethico-political

modern philosophy is characteristic of the inclusion of topics so far exempted from philosophical thought. Already, Jean-Jacques Rousseau, among others, introduces the interest in various “everyday” subjects, such as child-rearing and education, into philosophy or a heightened autobiographical (hence: self-referential and, in a sense, modern) interest in the darker recesses of his own self. Hegel does not stay behind in this effort to reflect on the present. It is in this regard that Jürgen Habermas praises him for the introduction of the realm of civil society into theoretical thought (1998, 4).⁶ Other everyday interests abound in Hegel’s philosophy: we notice a keen interest in what is, today, termed gender, an interest in contemporary literature, fashions, or the media, and not least the human body conceived as the condition of freedom. In this sense, Hegel’s philosophy is a paradigm of modern philosophy: It reflects milestones of modernity, such as the emergence of capitalist economics, secularity, a new form of individualism and subjectivity, and takes these to be the very object of philosophical thought.

The word “modern” contains yet another layer. Besides a reference to time, we discover that it bears a reference to “manner,” *modus*. Modernity is a time, then, that takes its name not from something substantial but from the accidental, changing. For modernity, change is substantial. We can even align this with Hegel’s philosophy: The philosopher’s goal is to conceive of the true “not only as Substance, but equally as Subject” (*PS*, 10). This dense remark has more than one meaning. In our context, we interpret this remark as Hegel’s (or the moderns’) effort to de-substantivize the world, even if this means stepping into a realm of constant change.

end—universal peace” (xxiii–xiv). For the link between Hegel, Shakespeare, and modernity, see Grady, (2000, 1–18). Hegel himself emphasizes the Protestant transfer from institutional authority to the individual as a key development. In fact, the spirit of reformation is the “new and ultimate banner around which peoples gather, the flag of freedom, of the true spirit. This is the spirit of the modern era and it designates the modern period. The ages prior to our age have faced but one labor, have had but one task, and that has been to incorporate this principle into actuality, thereby achieving for this principle the form of freedom, of universality” (*WH*, 506).

- 6 For an inspiring take on the interrelation of civil society, art, and modernity in Hegel’s work, see David James. It is noteworthy that James relates Hegel’s conception of civil society to Balzac’s *Illusions perdues*, understanding it as an analysis of civil society in the genre of the novel. Based on this, James suggests a new reading of Hegel’s understanding of art in modernity: “It has the function of providing the most adequate available presentation of the interpenetration of the particular and the universal, the contingent and the necessary, as it occurs in modern society, thereby making the objective features of modern ethical life in their relation to the contingency and particularity of everyday life into the object of a more reflective form of consciousness” (James 2009, 109).

What does such a “de-substantivization” of the world mean? What does it mean to make the world subjective? Some articles in our volume offer suggestions on the same. Benno Zabel touches upon this problem in his essay “The Concept of Judgment on the Legal Stage: an Alternative View of Hegel’s Theory of Freedom” (58–82) where he treats modern society as a “framework of a judgment community.” He shows that, relying on an interpretation of Kant’s concept of judgment, Hannah Arendt highlighted “the self-reflectivity of modern communities.” Without disputing Kant’s advances, Zabel maintains that it was “Hegel’s merit to have spelled out this multi-perspectivity of judgment in a model of right and the administration of justice.”

In a modern society, the subject encounters his or her own judgment as reflected by institutions. The eternal laws invoked by Antigone in Hegel’s *Phenomenology of Spirit*⁷ are no longer intellectually, emotionally, and socially satisfying and, *therefore*, they are no longer considered as binding. In other words, the concept of freedom and the framework that the modern society is built upon is satisfying only as long as it is open to challenges. Paradoxically, a modern social order is satisfying as long as it *can be experienced as not* satisfying.

Yet, there is something disturbing in considering Hegel as a modern author. Was he not the last classical thinker who tried to reconstruct *traditional* concepts on a new foundation? It is in his work that we encounter a strong emphasis on the absolute or the infinite. In his article included in this volume, W. Clark Wolf shows that we should not let ourselves be misled by this term (15–35). The concept of “absolute idealism” might relate precisely to this thoroughly modern and non-metaphysical insight—according to which the world is something produced by society—or the source of authority shifts from all types of the “beyond,” or from the transcendence, into the very center of society, into a form of collective mindedness that is now considered the veritable source of authority.⁸ Succinctly, we may even claim that modernity is the attempt to build a world out of itself, without a transcendent source of eternal meaning. As Alberto L. Siani aptly states in his essay “Modern Philosophy and Philosophical Modernity: Hegel’s Metaphilosophical Commitment”: “The program of the *Phenomenology* is aimed at the dissolution of the claim to absoluteness of any however given objective configuration, be it laws, institutions etc.” (197).

7 Sophocles’ *Antigone* invokes the “unwritten and infallible law of the gods.” These are “not of yesterday or today, but everlasting, Though where they came from, none of us can tell” (PS, 261).

8 Luhmann goes further than that suggesting that the modern society is defined by its inability to bear *any* form of authority (2006, 42).

Accordingly, modernity (and modern philosophy) is tied to an awakening of society or even a creation of what we understand today under the term “society.” With the emergence of society, the world changes. There is no modernity without a social world self-consciously created by the modern subject.

Even in this regard, we stumble upon a relation to time yet again. This awakening of a new form of subjectivity is related to the conception of time as experienced by a subject, thus as history. It has often been pointed out that modernity is built upon the concept of progress. Certainly, we can support this thesis with many arguments. Yet, man never focuses in one direction alone. Calling to mind the modern veneration of the Greek past, even a “tyranny of Greece over Germany” (Butler 1935), we realize just how much modernity is overwhelmed with nostalgia, with a characteristic “homesickness.” The moderns sense that their time and their freedom is built upon losses, primarily upon the loss of a universally accepted authoritative concept of the world. Nobody would consider a fascination with the Greeks unjustified, and Hegel himself attempted to integrate into his conception of modernity some forms of Greek ethical life. We might call to mind Hegel’s quote included in numerous of his writings: “When a father inquired about the best method of educating his son in ethical conduct, a Pythagorean replied: ‘Make him a citizen of a state with good laws’” (*PR*, § 153, 160).

The contradictions arising thereof are well known. One would like not to succumb to a deepened ironical, even nihilist, subjectivity (that is one of the many faces of modernity). Simultaneously, one also does not want to abandon the value that Hegel cherished so much in modernity: subjective freedom, or “the sublime freedom that comes from the subjective unity of self-consciousness.”⁹ Eventually, it seems that what remained from Hegel’s fascination with the Greeks is his emphasis on the fact that the human being is, first and foremost, a member of a society, a “citizen of a state,” according to the Pythagorean mentioned above. As such, one can be free only if there exist objective structures safeguarding subjective freedoms. If these are not present, the human being is not completely bereft of any subjective freedom. Yet, in this case, one’s freedom can only be lived in seclusion from the public. There might be times when this freedom is the only viable option; yet, freedom lived in seclusion is only a shadow of a freedom.

9 For an appreciation of, yet distancing from, Greek culture and society, see e.g. *WH*, 413: “So we always feel ourselves drawn to Greece. We regard Greek life in general, its ethical and political qualities, to be shaped in charming and beautiful and interesting ways. But spirit cannot find his highest satisfaction here. The objective absolute that is beautiful lacks a principal element, namely truth; and here right and ethical life still lack the sublime freedom that comes from the subjective unity of self-consciousness.”

As mentioned above, modernity is related to a loss, real or imagined, to the abovementioned homesickness, superbly expressed in Hölderlin's *Hyperion*. Despite his admiration for the Greeks, eventually, Hegel considers this experience of loss with suspicion.¹⁰ Are not the Greeks as conceived by the moderns—certainly not only, but to an important degree nonetheless—an image made by the moderns? Do we not, as so often in the past and in many guises, venerate our own image? In other words, the awakened consciousness of subjective activity might recognize its own traces even in the foreign past. To some degree, people have always authored their own past; the difference is that the moderns do this *and* see it. Thus the concepts of time, history, and subject enter a close, intimate alliance that Hegel has subjected to a unique analysis which can be summed into the motto: Subjectification leads to temporalization and vice versa, an alliance expressed in the term *Zeitgeist* that proved so inspiring to Hegel.

Hegel's concept of the modern *Sittlichkeit* is an attempt to formulate an autonomous society. In this context, this means to formulate a society subjected only to its own laws, a society created by a collective effort. Accordingly, Hegel appropriates the concept of autonomy and considers it as the foundation of modern institutions. Many have noticed, not uncritically, that in transferring it from individuals to institutions, the concept of autonomy changes radically. By this transferal, Hegel suggests that it is not so much the individual but, to a considerable extent, the institutions that are the true "home of the categorical imperative," to borrow a term that Paul Cobben uses in the title of his contribution (83–102). In other words, the modern institutions are to safeguard the subjective freedoms of individuals and are taken as the condition of personal autonomy. To speak with Hegel's Pythagorean again, people become good by living in a state governed by appropriate laws. Thus, institutions are not considered the externalizations of personal whims but are the products of socially and politically instituted procedures that gain authority on the basis of this very collectively approved procedure. The subject may not be able or willing to consent to every single political decision or social tendency; yet, it is the subject's right to demand to encounter the basic framework of the society one is part of as sufficiently legitimate, thus respecting personal freedom.

10 See *WH*, 413. "In modern times we find great and profound men such as Rousseau who look backwards for what is better, for example, to the wilderness conditions of North America in preference to the cultured European states; the belief is that what is better precedes the introduction of culture. However, this is nor the case; what is better lies ahead."

However, problems abound in such a conception. Modernity taken as a world of self-reflective agents is defined by a loss of stability. Hence, on the social level, it is endangered by decay and, on the personal level, by various forms of ironical self-relations that result in nihilism, not incidentally related to modernity as closely as an emphasis on personal freedom.¹¹ The demand to not only *think for oneself* but to *think oneself*¹² might turn into cynicism, self-serving nihilism, and fatigue. We should as well keep in mind that the concept of progress is opposed to that of decadence only on a superficial reading. Hegel himself was one of the first thinkers to show that these processes are not an arbitrary aspect of modernity but make up part of its essence. Together with a pronounced claim of self-fulfillment, we encounter an intensive fear of self-loss and alienation as the other side of the coin. The modern man is expected not to rely on myths and illusions, without becoming disillusioned.

Besides this fear tied to the reverse side of modernity, there is another concern, one linked to the institutionalization of reflexivity. Hegel was one of the few modern authors who did not discard the concept of habit and second nature, which certainly is a tribute to the Greeks. On the contrary, he has shown that habits do not primarily lead to decay but are key supports of spirituality and personal freedom. His intriguing concept of habit is linked to the concept of *Sittlichkeit*, ethical life, the word itself being derived from *Sitte*, which means social mores or habits. According to Hegel, we need to focus on our ability to form habits, the origin of which is our own will. Eventually, these habits shall be performed without conscious effort and in this shall be the support of our will. By this, we transform part of ourselves into, so to speak, a home for our will—into a substance made of habit that we, which is seminal, have subjectively consented to. Thus, we live up to Hegel's demand that the truth is *not only* substance but subject as well. In other words, Hegel does not discard the substantial, but even the substantial needs to be related to the subjective. Excellence, on the level of individuals and societies, is based on acquiring good habits—a Hegelian idea vividly present in our own culture, as Bart Zantvoort shows in his essay “Slaves to Habit: the Positivity of Modern Ethical Life” (36–57) included in this volume.

That habits are a condition of spirituality does not mean that they might not prove to be fatal—both on the level of the individual and in certain forms

11 For an excellent study of the various forms of modernity—modernism, avant-garde, decadence, kitsch, postmodernism, see Calinescu (1987).

12 Hegel says: “Whoever has not thought himself is not free” (*R*, § 5, 51). This phrase has proven particularly important for Vieweg's interpretation of Hegel's practical philosophy. See Vieweg (2012).

of *Sittlichkeit*. The shift from personal subjective rationality to objective structures is wholesome and dangerous at the same time. Without being challenged regularly, institutions devolve into dead houses of last men, of men whose self is not theirs own anymore; without being challenged and subjected to criticism, man dies from being only oneself.

Accordingly, modernity is a time of criticism. It is, therefore, no contradiction to say that Hegel was both a paradigmatic thinker of modernity *as well as* a critic of modernity (or certain forms thereof). Modernity is, especially in Hegel's conception, tied to an openness to conflict and the ability to bear challenges from oneself and others, as is well reflected in his dialectic definition of freedom as being with oneself in the other. For Hegel, only in an era of criticism of one's time, of other's, and of oneself can we become who we are since it is only then that we can attempt to realize the potential of freedom.

It is questionable that people of different eras would be excluded from this achievement. Irrespective of this doubt, however, we may notice that even if we consent to the idea that modern freedom has its specificities and that it essentially differs from the freedom of the ancients, we should as well consider that there are numerous versions of modern freedom. Today's Western reader will be more attentive to the dark side thereof. This is one of the many aspects of the topic in question to which the authors of this volume have attempted to contribute. Thus, the leading question behind the articles can be framed as follows: Which of the intellectual achievements of Hegel's legacy can illustrate the many interests, fears, and problems that we encounter in our modernity from a new perspective?

2 The Essays

Hegel's responses to the challenges of modernity are diverse and often contradictory. Yet, if our thoughts have been accurate up to this point, our own answers to the questions that *our* modern world poses (or imposes on us) are more important, even if less philosophically excellent than Hegel's. They are both a symptom of the present type of modernity that we are part of as well as the innermost substance of our present, a present that *we* shall reflect. Keeping this in mind, we have inquired into key questions that Hegel raises and the answers he suggests. This was done during a conference held in Prague in September 2018. We would like to thank the Institute of Philosophy and Religious Studies of the Faculty of Arts at Charles University and the Institute of Philosophy of the Czech Academy of Sciences for generously supporting this event. The revised and reworked contributions make up this volume.

In his article “The Authority of Conceptual Analysis in Hegelian Ethical Life,” W. Clark Wolf offers a contribution to Hegel’s “social ontology.” He claims that Hegel’s concept of “ethical life” (*Sittlichkeit*) helps to explain how concepts (and their explications) have both objective and intersubjective authority in the social domain. Hegel claims that modern institutions are a product of self-conscious purposes so that they are conceptually constituted. Concepts do not just represent these objects and so depend on a contingent relation to them. As many contemporary social ontologists agree, this means that our concepts of these institutions are uniquely, epistemically “transparent.” They have objective authority. Concepts have intersubjective authority in the modern world as well, according to Hegel. However, Clark Wolf’s intention is to show that this feature of Hegel’s account does not rely on the solution to a philosophical problem. Rather, since the concepts of modern ethical life are “essentially contested,” their content depends on the practical and political agreement of modern subjects. This means that concepts can only have objective authority if some prior intersubjective agreement has been reached. The role of philosophy as conceptual analysis is, thus, importantly dependent on political developments.

Bart Zantvoort tackles the problem of habit, on both the individual and social level. Habit, Hegel argues, paradoxically is both the *condition sine qua non* of freedom and rationality, as well as the cause for the basest enslavement. We can understand positivity, Zantvoort argues in his article “Slaves to Habit: the Positivity of Modern Ethical Life,” as a result of what we could call social habit: the institutionalization, objectification and routinization of social practices and beliefs. The question then becomes “Does the modern state successfully resolve the problematic aspects of social habit, or do its ‘mechanistic’ and ‘enslaving’ effects continue to affect modern life?” Zantvoort argues that the latter is the case and that it may even be the case that modern ethical life is particularly vulnerable to this kind of “enslavement” because it is affected by forms of positivity which are specific to modernity.

Benno Zabel’s essay “The Concept of Judgment on the Legal Stage: an Alternative View of Hegel’s Theory of Freedom” takes up the concept of judgment in Hegel’s practical philosophy, a concept that does not occupy a particularly prominent place in modern legal philosophy. The concept of political judgment, in contrast, plays a much more significant role. Nonetheless, Zabel argues that examining the juridical side of judgment may make us further aware of the links that exist between the political and the legal spheres. In this way, one may also see that there is, connected to the idea of judgment, a normative project that rightfully acquires its own reality and concrete form in a universally binding frame of interpretation. It is Hegel’s merit to have spelled out this

multi-perspectivity of judgment in a model of right and the administration of justice. Concurrently, it offers an alternative view of the promise of freedom of modernity.

Cobben's article "Hegel's Ethical Life as the Attempt to Offer a Home to the Categorical Imperative" formulates Hegel's practical philosophy as a search for a "house of freedom." The three moments of the ethical life in Hegel's *Philosophy of Right* not only develop the logical moments of ethical reality. The institutions of ethical life can also be understood as the institutional form in which the real individuals are involved in a process of education that makes them carriers of the ethical institutions. The historical situatedness of this process of education can be overcome if it is not considered as an education that makes the individuals carriers of specific ethical institutions but, rather and in a more abstract manner, of institutions that are only determined in their logical form: as moments of the logical realization of the free will. It will become clear that education at the level of family will perform itself within a network of friends and, at the level of civil society, within a network of social institutions.

In his article "Formalism and the Actuality of Freedom: on Kant and Hegel," Christian Krijnen seeks to both clarify and evaluate the concept of *Sittlichkeit* against the background of a reconsideration of Kant's and Hegel's relation. Krijnen claims that due to the formalism of Kant's conception of the moral law (*Sittengesetz*), Kant does not succeed in conceiving of the actuality of freedom adequately. For Kant, freedom of action can only be understood with regard to its form and not its content as well. Consequently, the determination of an action is, *nolens volens*, heteronomous in nature. Hegel, in contrast, rationalizes the content while simultaneously modifying the entire relationship between form and content. This leads to a conception of free action as being (and remaining) with oneself in one's other. Kant's conception of "morals" (*Sittlichkeit*), therefore, presupposes Hegel's concept of *Sittlichkeit*. Both for Kant and Hegel, the free will wants itself. While, in Kant, form and content of the will remain opposed to each other, Hegel determines the content of the will as a whole of necessary elements of actualizing the will. The constellation of an abstract system of rules (abstract right) and a subject that determines itself formally (morality) is insufficient for comprehending the actuality of freedom. The normative content of the situatedness of the subject must be considered, i.e. *Sittlichkeit*. Only in *Sittlichkeit* can actions take place. Truly free actions take place in a *Sittlichkeit* that itself is the "product of freedom." Correspondingly, in his *Philosophy of Objective Spirit*, Hegel determines the shapes of *Sittlichkeit* as shapes of the existence of the free spirit.

Tereza Matějčková seeks to locate Hegel's understanding of family both against the background of Hegel's own *Zeitgeist* and to evaluate the possibilities

and limits of Hegel's philosophy of family in today's world. In her article "Hegel's Philosophy of the Modern Family: Fatal Families?," she emphasizes that Hegel authored the concept of the nuclear family, a model that was considered controversial at the time since it severed ties with one's extended family as well as with the inherited land. Opposing pre-modern social and political structures, Hegel—who can be considered one of the first advocates of emotional liberation—emphasized the necessity of freely choosing one's spouse, and he considered love as the only ethical foundation of families. In a family, love was identified as transforming from a pure emotion into a structure marked by mutual expectations. Despite the centrality of the family as a "mediating channel" of nature and ethics, Hegel's attitude toward the family remained ambivalent. As a family member, one is inescapably subdued by powers beyond one's consciousness. In fact, this is the reason why the structure of the family has traditionally been the site of fatal conflicts, as portrayed in Greek tragedies. On this basis, Matějčková argues that Hegel is wrong to consider modernity as comprising "prosaic," "post-tragic" times. In fact, with the growing emphasis on love and relations in modernity, we witness the return of a tragic worldview, even a re-installation of one form of extended families. Due to the growing life expectancy of humans, up to four generations of one family often live simultaneously. This growing density of families is accompanied by a density of broken past relationships. From this perspective, we do not live in a time beyond the family but in one that is submerged in familial ties and intimate relations, a moment well suited for a return of the tragic.

Stascha Rohmer raises the question to what extent the modern market relates to what we call "European values" and "European identity." In his article "The European Spirit: Some Remarks on the Idea of Europe from a Hegelian Point of View," Rohmer defends the thesis that Hegel is still the most important philosopher for the understanding of what the European identity consists in. Hegel points out that European Rationality and European values are results of a historical process, which began as far back as in early Greek History. Hegel's philosophy presents a synthesis of Greek, Roman, Jewish-Christian insights in structure of ethical life (*Sittlichkeit*). Hegel's philosophy is based on the idea that the world has rational structure and that every human being—regardless their race or gender—is able to understand the fundamental structures of the foundations of our common world. Furthermore, Rohmer claims that in Hegel's *Philosophy of Right*, we evidence an interesting distinction between two forms of social order, the first being the civil society (*bürgerliche Gesellschaft*) that, combined with a system of market economy, constitutes the "external state" (*äußerer Staat*, § 183), and the second being the internal unity or "idea of state" which is expressed in the "inner constitutional law" (*inneres Staatsrecht*,

§ 259). According to Hegel, between the external and the inner state, or between the economic community and the community of values, there is no irreconcilable contradiction. However, Rohmer calls this thesis into question in the last chapter of his article—taking account that the European Union has created the biggest internal market in the world, but failed in forming an integrative unity.

In his contribution “The State and Ethical Life in Hegel’s Philosophy,” Jiří Chotaš focuses on some lesser known connotations of Hegel’s conception of state. One of them is that according to Hegel, state should include some aspects of “ethical life” (*Sittlichkeit*), to wit the laws, customs, and institutions accepted by its citizens. Chotaš first explains the distinction between state, on the one hand, and family and civil society—two other spheres of ethical life—on the other hand. An analysis of these terms implies that Hegel rejects both a state governed by a patriarchal rule and a state as a utilitarian institution. On the contrary, by “ethical” state, he means an ethical community with which citizens can identify. Such a state also constitutes a framework for family and civil society, the two lower spheres of ethical life. The article also treats Hegel’s explanation of patriotism and the role of religion in a state. Chotaš finds that Hegel views patriotism in terms of citizens’ trust in the state and its institutions. Like Tocqueville, Hegel is convinced that genuine religion motivates believers towards the fulfilment of their civic duties. The final part of the study deals with Hegel’s concept of state as a constitutional monarchy. Chotaš shows that according to Hegel, even the political authorities must respect the state’s ethical aspects. These considerations are concluded by noting that Hegel believed the political education of citizens to be highly important. Hegel’s conception of ethical life in relation to state is an original contribution to political theory.

Olga Navrátilová explores the controversial question of Hegel’s critique of Kant’s concept of a worldwide federation. In her study “*Sittlichkeit in International Politics*,” she analyzes the respective paragraphs of *Elements of the Philosophy of Right* dedicated to international relations by pointing out the structural analogy between this section and the corresponding previous sections of Hegel’s philosophy of right (abstract right, morality and civil society). In this way, the ambiguity arising from the tension between the normative claims of legal and moral obligations and the pragmatism of national interests is exposed. The study subsequently seeks to answer the question of whether Hegel can be viewed as a proponent of nationalism or rather of cosmopolitanism and whether he refuses the idea of perpetual peace on principle or merely in the form in which Kant displays it. The fact that these questions are answered in different manners by various scholars accurately reflects, as the study claims, the above-mentioned ambiguity. This ambiguity need not

be viewed as a failure of Hegel's political philosophy and as a replacement of the normativity of practical reason by the factuality of history but merely as an exposition of the limits inherent in the realm of objective spirit as such. This exposition may then be read as a warning against cherishing exaggerated hopes in political utopias as well as against the misuse of moral argumentation in the sphere of international politics. It is argued, however, that by completely banishing morality from the international sphere, as Hegel in his critique of Kant does, the very ambiguity tends to disappear and seems to be replaced by mere pragmatism.

Alberto L. Siani argues that in order to be able to properly assess the limits and potential of Hegel's concept of modern ethical life, it is preliminarily necessary to discuss the reasons and implications of his metaphilosophical commitment to philosophy as the only completely adequate form of reconstruction, justification, and critique of modern ethical life. Hence, Siani focuses, in his contribution entitled "Modern Philosophy and Philosophical Modernity: Hegel's Metaphilosophical Commitment," on Hegel's intention to overcome philosophy into actual knowledge as an essential component of his view of modernity, including modern *Sittlichkeit*. He begins by arguing that Hegel's general project of the self-fulfillment of philosophy is to be read as an answer to the actual need of the modern world, i.e., the need to philosophically found and establish the principle of subjective freedom. The focus here is on Hegel's inversion of the common view of the True, which is now to be thought and expressed not only as substance but also as subject. Siani then proceeds to argue that Hegel's metaphilosophical commitment to philosophy implies the renunciation of every static and substantial conception not only of philosophical knowledge but also of the actual world and of the human nature; therefore, this idea is incompatible with the assumption of a given form of reality as the ultimate actualization of freedom.

Many, if not all, authors contributing to this volume have taken up the question of time in its manifold forms. Traditionally, philosophers have considered the concept of space as something of less value than that of time. To speak with some license, Klaus Vieweg decided to honor space—to speak concretely, the place of the conference, Prague—and hold a paper on Hegel's sojourns in this metropole.

Abbreviations of Hegel's Works

Aesth. 1975. *Aesthetics. Lectures on Fine Art*. Translated by Thomas Malcom Knox, vol. 2. Oxford: Clarendon Press.

- PR 1991. *Outlines of the Philosophy of Right*. Translated by Thomas Malcom Knox. Oxford, UK, Oxford University Press.
- PS 1977. *Phenomenology of Spirit*. Translated by Arthur V. Miller. Oxford: Oxford University Press.
- R 1986. "Grundlinien der Philosophie des Rechts." In *Werke*, vol. 7, Frankfurt a.M.: Suhrkamp.
- WH 2011. *Lectures on the Philosophy of World History*. Edited and translated by Robert F. Brown and Peter C. Hodgson, vol. 1. Oxford: Oxford University Press.

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The Authority of Conceptual Analysis in Hegelian Ethical Life

W. Clark Wolf

1 Introduction¹

There is among philosophers a common attraction to the idea of philosophy as conceptual analysis: namely, that philosophy has as its aim the clear explication of the central terms governing ordinary and scientific thought. This idea can be traced back even to Plato's Socrates, who at least initially used dialogues to draw out clearer definitions from his interlocutors of key terms such as virtue, knowledge, and justice. For Plato, at least at one stage, such explication can result in genuine and deep knowledge, even if this is only a more explicit and recollected form of a knowledge that was once merely implicit; he used the concept of forms (*eidé*) to say what the object of such knowledge is. For later thinkers, especially linguistically minded philosophers of the twentieth century, the attraction of the 'conceptual conception' of philosophy was not to credit philosophy with a distinct form of knowledge as much as to distinguish its activity from empirical science. Philosophy was to be regarded not as a first-order inquiry into a special set of rational objects, but a second-order determination of meanings in support of the claims of first-order sciences. It was, in fact, essential to this conception that conceptual analysis not introduce anything that was not at least implicit in ordinary empirical judgments.²

Though the conceptual conception of philosophy perennially attracts as many critics as it does adherents, it seems to reappear in a new form with each generation.³ Absent the conceptual conception, the line between philosophy

1 The present version of this paper benefitted from comments and discussion with fellow participants at the conference in Prague. I would especially like to thank Paul Cobben, David James, and Christian Krijnen for valuable discussion.

2 See especially Schlick (1931, 56): "And the totality of sciences, including the statements of daily life, is the system of cognitions. There is, in addition to it, no domain of 'philosophical' truths. Philosophy is not a system of statements; it is not a science. ... [P]hilosophy is that activity through which the meaning of statements is revealed or determined."

3 See, e.g., Part II ("Conceptual Analysis and the Naturalistic Challenge") of D'Oro and Overgaard (2017) for some recent accounts.

and other disciplines tends, for better or worse, to blur. Nevertheless, a central strand of dissatisfaction with this conception may be identified in its non-Platonic modern form. This is that conceptual analysis seems only (and often by design) to express *what we mean* rather than *how things are*, or what is true. There seems to be no standard of correctness or objectivity, especially if conceptual analysis involves an appeal to merely subjective “intuitions.”⁴ Critics demand that philosophy be held to a higher standard than this, and even that philosophy as currently practiced *does* meet higher standards of knowledge or truth. Older conceptions of conceptual analysis could make assumptions about the objective validity of concepts that are no longer admissible. For example, in the eighteenth century Moses Mendelssohn could write: “All our concepts are like the seeds of grain of dying plants which, as bad as they look, are nonetheless full of inner virtue and conceal forests of beauty in their husks” (1997, 271–272). Mendelssohn believed that an analysis of the concept of something would lead to knowledge of its nature, but this only by virtue of the theological catchall of preestablished harmony. For us, however, attributing truth to the products of conceptual explication may seem to be a form of epistemic self-congratulation.

Absent such a theological device, or a world of Platonic forms, there seems to be nothing on which to hang the validity or truth of conceptual analysis. Let us call this the *authority problem* of conceptual analysis. (It will be seen later why “authority” is felicitous here.) The problem breaks into two parts. On the one hand, conceptual analysis seems to lack *objective* authority: namely, we lack the presumption that the explication of meaning can express how things are. We cannot assume from our possession of a concept that it determines essential features of something existing independently from it. On the other hand, conceptual analysis may seem to lack *intersubjective* authority. That is, lacking objective authority, it cannot even properly articulate what *we* mean by our concepts, and instead expresses the parochial conceptual schemes of individual *I*s.⁵ In this paper, I wish to show that Hegel’s understanding of concepts and their role in constructing the social world helps to solve the authority problem of conceptual analysis, at least in the domain of socially-oriented (*sittliche*) philosophy. Hegel’s philosophy can in this way be considered an ally to the conceptual conception of philosophy in a contemporary form.

4 Machery (2017) details criticisms of the use of intuitions stemming from thought experiments (“the method of cases”) to provide modal or conceptual knowledge in philosophy.

5 For criticisms along such lines, see Baz (2017, 47). Machery (2017, Ch. 4) argues that philosophical intuitions are also culturally parochial.

While I will not simply identify Hegel's metaphilosophy as conceptual analysis of the linguistic variety,⁶ it is worth noting that there are enough similarities between the approaches to merit more than a superficial comparison.⁷ Hegel frequently insists that philosophy is distinguished from other areas of inquiry by its uniquely conceptual character, and, much like the twentieth century variety, Hegel thinks of one of the distinguishing marks of conceptual inquiry as its non-empirical character.⁸ At times, moreover, Hegel even makes use of the metaphor of analysis to describe the form of conceptual thinking.⁹ Clearly, Hegel would not think of the proper form of conceptual analysis as a piecemeal enterprise, but rather a systematic and holistic one. The same is true, however, of the many of the classical proponents of twentieth century conceptual analysis.¹⁰ Hegel does not identify concepts with the meanings of terms in ordinary language (cf. *WL* II, 406/628), but neither do most twentieth-century analysts. On both conceptions, an analysis of meaning may introduce a local revision into our way of thinking. These similarities do not entitle us to identify Hegel's method as conceptual analysis. But even so, differences between the Hegelian and twentieth century conceptions of philosophy do not mitigate the shared need to explain how it is that the expression of a concept or system of concepts (especially if they are not grounded through direct empirical intuition) is sufficient for truth in some sense. My suggestion will be that Hegel's solution to

6 Yet see the work of Stekeler-Weithofer (1992, 2005, 2013) for the perhaps the boldest claim that Hegel is a conceptual analyst *avant la lettre* (2005, 9).

7 Quotations from Hegel (unless otherwise specified) will cite the 1969 German *Werke* edition, the English translation, and (if applicable) the section or paragraph number. See *Abbreviations* of key works. In citations from the *Encyclopedia* or *Philosophy of Right*, "R" refers to the paragraph remarks added by Hegel, and "Z" to *Zusätze* (additions), added from Hegel's students' lecture notes.

8 "[P]hilosophical thinking has its own *peculiar forms*, apart from the forms that they [philosophy and the empirical sciences] have in common. The universal form of it is the *concept*" (*EL*, 52/33/§ 9). Hegel strongly criticizes an empirical conception of conceptual content in "The Concept in General" from the *Doctrine of the Concept*. See *WL* II, 257–269/517–525. He is elsewhere committed to the importance of empirical inquiry as preceding philosophy, especially in the philosophy of nature (cf. *EN*, § 246). But this does not preclude the distinction of conceptual and empirical inquiry for Hegel.

9 "[Q]uite generally, the whole course of philosophizing, being methodical, i.e., *necessary*, is nothing else but the mere *positing* of what is already contained in a concept" (*EL*, 188/141/§ 88R). Just prior, Hegel describes the deduction of a concept as "to this extent entirely *analytic*."

10 See especially Ryle: "[T]he philosopher's task is never to investigate the *modus operandi* just of one concept by itself; the task is always to investigate the *modus operandi* of all the threads of a spider's web of inter-working concepts ... To fix the position of one concept is to fix its position *vis-à-vis* lots of others" (1971, Vol. 1, [1962], 189).

this problem in the social realm is broad enough to generalize to a solution for other conceptual conceptions of philosophy as well.

I will argue that Hegel's concept of ethical life (*Sittlichkeit*) provides the basis of his solution to the authority problem of conceptual analysis in both its dimensions. Hegel's concept of ethical life is important because it reveals a domain in which concepts are not merely representative, but constitutive, of reality. This shows how a concept can have objective authority in that domain. On the other hand, given that ethical life is not only conceptually but socially constituted, the problem of intersubjective authority is of a different nature. Hegel's account does not solve it—because it turns out not to be a *philosophical* problem at all—but shows rather how the institutions of the modern world itself are attempts to solve it practically and pedagogically. In short, the second problem is a key problem of modern politics as such. In the first section of this paper, I will lay out some interpretive groundwork on my conception of *Sittlichkeit* in relation to Hegel's theory of concepts and their realization from his *Logic*. Here it will become clearer what sense of “conceptual analysis” can appropriately characterize Hegel's ethical philosophy. In the second section, I will show how Hegelian *Sittlichkeit* provides the foundation of a social ontology, and that social ontology is widely recognized as permitting “transparent” conceptual access. Finally, I show that Hegel's use of social ontology to explain conceptual authority does not allow philosophy to adopt an authoritarian attitude toward concepts. Rather, in modern ethical life, the truth of conceptual analysis is co-constituted by the rational evaluations of fellow institutional participants.

2 Modern Ethical Life as the Realization of the Concept

The foundation of Hegel's philosophical method in the realm of political philosophy is his conviction that modern ethical life involves the realization of “the concept” (*der Begriff*). In this section, I will try to show how the realization of the concept is central to Hegel's project, especially in the *Philosophy of Right*. The realization of the concept in modern ethical life becomes the foundation for a philosophical method centered on the explication of a system of concepts. To put the issue somewhat crudely, it is ultimately because concepts are the ‘input’ of modern ethical life that philosophy can produce a conceptual ‘output’: a system of concepts that expresses the nature of actual modern institutions.

Hegel tells us in the Introduction to the *Philosophy of Right* that the “subject-matter of the philosophical science of right is the *Idea of right*, i.e. the concept

of right together with the actualization of that concept" (*GPR*, § 1, 29/17). He goes to explain that philosophy is not concerned with concepts in the sense of mere general abstract representations, but rather with "the concept" which "has actuality, and further ... gives this actuality to itself" (§ 1R, 29/17). Hegel's use of *Begriff* in the singular is somewhat notorious.¹¹ However, in the context of the *Philosophy of Right*, it becomes clear that the singular concept that is of interest is *right*, or as it is defined, the existence (*Dasein*) of freedom (§ 30). As such, *right* represents the complete practical aims of concrete subjects. The reality of the concept of right also involves the development of a number of 'lower' concepts which are necessary for its realization. As Hegel says later, "[t]he determinations of the concept in the course of its development are from one point of view themselves concepts, but from another they take the form of existents, since the concept is in essence Idea" (§ 32, 85/49). Thus, even though Hegel speaks of the concept in singular terms, this singular concept also "engenders and dissolves the particularizations of the universal" (§ 31R, 84/48). So the development of the one concept is equally a development of a system of related concepts, each of which are necessary for the existence of right.

In describing the realm of right as the realization of the concept, Hegel develops a theme in Kant and Fichte's practical philosophy. Kant and Fichte treated theoretical and practical cognition as holding asymmetric relations to their respective objects. A theoretical concept is beholden to an object that already exists, which it is accountable to represent. A practical concept, by contrast, represents an object that the subject aims to bring about: the result of an action. The object, or result, is accountable to the concept, the purpose. Kant writes of the "ought" of practical reason: "Now this 'ought' expresses a *possible action, the ground of which is nothing other than a mere concept*" (A 547–548/B 575–576; emphasized). Kant calls the general "faculty" to cause an object by means of a representation "desire" (*Begierde*): "The *faculty of desire* is a being's *faculty to be by means of its representations the cause of the reality of the objects of these representations*" (*Ak.* 5, 9/1997, 8). There is in practical reason a form of conceptual causality.

This idea is developed at greater length in Fichte's practical writings. He explains that the agreement of concept and reality is inverted in the case of practical cognition. In this case, "[w]hat is objective is supposed to follow from what is subject; a *being is supposed to result from my concept* (the concept of an end [*Zweckbegriff*])" (*FW* IV, 2/2005, 8; emphasized). A practical concept is specifically a purpose, and realization of that concept results in a new "being."

11 See Wolf (2018) for a fuller account of the approach taken here to Hegel's *Begriff*.

Fichte calls such beings “products of freedom” and defines them thus: “A reality that has its ground in a concept is called a product of freedom” (134/128). Going beyond Kant, Fichte believes we can have cognition of such products, namely as the objective deeds resulting from freedom:

The concept (of an end) immediately becomes a deed [*wird zur That*], and the deed immediately becomes a (cognitive) concept (of my freedom)... It would have been quite correct to deny that freedom can be an *object* of consciousness; freedom is indeed not something that develops by itself, without any assistance from a conscious being, in which case the latter would only have to be an observer. Freedom is not the object but the subject-object of a conscious being (137/130–131; italics mine).

Unlike Kant, then, Fichte does not rule out that we can have some objective knowledge of the results of free practical achievement.

When Hegel speaks of the philosophy of right as the realization of a concept, I believe this Kant-Fichte background should be held in view. Though these thinkers glimpsed the idea that concepts can be causes in practical reason, they did not anticipate the full scope Hegel would give to this idea. Hegel's development of Kant and Fichte's idea of practical-conceptual causality can be found in the *Science of Logic*. Just as Fichte credited *Zweckbegriffe* as causes, so Hegel speaks of a teleological process as “the *translation* of the concept that concretely exists distinctly as concept into objectivity; as we see, this translation into a presupposed other is the rejoining of the concept *through itself with itself*” (WL 11, 454/664). Likewise, Hegel sees the teleological process as yielding an object that is conceptually constituted, namely the “product” of the process: “[T]he product is an objectivity which is identical with the concept, is the realized purpose in which the side of being a means is the reality itself of the purpose” (459/667). In the context of the *Logic*, Hegel is treating teleology only according to its logical structure, and not as identical either to a natural or social process. For Hegel, teleology can be treated as a special logical form because it involves a universal determining itself in an object, rather than objects determined by a universal externally.¹² Nevertheless, when Hegel

¹² “[P]urpose [*Er = Der Zweck*]... manifests *rationality* [*Vernünftigkeit*] by being the concrete concept that holds the *objective difference in its absolute unity*. Within, therefore, it is essentially *sylogism*. It is the *self-equal universal*; more precisely, *inasmuch as it contains self-repelling negativity*, it is *universal though at first still indeterminate activity*. But since this activity is negative self-reference, it *determines* itself immediately and gives itself *the moment of particularity*, and this *particularity*, as likewise the *totality of the form reflected*

comes to discuss practical cognition (“The Idea of the Good”), there is a clear implication that human practical cognition leads to objective results in the way his discussion of teleology anticipates. On the cusp of his introduction of the “absolute Idea” he speaks of the way the knowing subject can encounter an *objective world* that is the result of the realization of practical purposes:

Thus the subject now exists as *free, universal self-identity* for which the objectivity of the concept is a *given* [*eine gegebene*], just as immediately *present* [*vorhandene*] to the subject as the subject immediately knows itself to be the concept determined in and for itself. Accordingly, in this *result cognition is restored and united with the practical idea*; the previously discovered reality is at the same time determined as the realized absolute purpose, no longer an objective of investigation, a merely objective world without the subjectivity of the concept, *but as an objective world whose inner ground and actual subsistence is rather the concept*. This is the absolute idea (548/733–734; italics mine).

Here Hegel takes a step beyond Kant and Fichte. Both of them acknowledged that practical reason has a different kind of cognitive content than theoretical cognition, but neither of them sufficiently realized that the results of rational activity can themselves be theoretically cognized. There is, namely, an objective world whose “inner ground and actual subsistence is ... the concept.” This is especially the logical-metaphysical groundwork for the concept of “ethical life.”

Thus, the *Philosophy of Right* carries out in a specific way a possibility described in the *Logic*: for a concept to be realized as an objective world through a teleological process. Specifically, Hegel thinks that *right* as such represents *the* concept that can be realized practically. Ethical life is his term for what right is when it is objectively realized.¹³ This is why ethical life is not just the concept but also the “*Idea of freedom*” (*GPR*, § 142): the concept of right together with its actualization (§ 1). It is “*the concept of freedom that has become the present world* [*vorhandene Welt*] *as well as the nature of self-consciousness*”

into itself, is content as against the posited differences of the form. The same negativity, through its self-reference, is just as immediately the reflection of the form into itself and singularity” (*WL* II, 445–46/657–58; italics mine).

13 See already in the *Phenomenology*: “[I]f we bring out this still inner spirit as the substance that has already advanced to its existence [*Dasein*], then in this concept *the realm of ethical life* opens up. For this is nothing else than, in the independent *actuality* of individuals, the absolute spiritual *unity* of their essence” (*PhG*, § 349, 264/141; slightly modified).

(§ 142, 292/155; modified). This Idea is specifically manifest in the “laws and institutions” of the objective social order (§ 144), which are also constitutive of the subjects of ethical life (§ 147). Namely, the laws and institutions of ethical life realize *purposes* that the subject can recognize as his or her own (§ 152). For this reason, the subject of modern society can have true and adequate *conceptual knowledge* of the institutions of ethical life (§ 147R, § 152R). For if the connection with Kant and Fichte detailed above is on the right track, conceptual knowledge will be coextensive with the knowledge of a realized practical purpose. The conceptual explication of modern ethical life will be at the same time an explication of the purposes implicit in modern institutions and how those institutions must be designed to carry them out.¹⁴

It is true, however, that *Sittlichkeit* cannot simply be equated with institutions that realize concepts. In its broadest sense, *Sittlichkeit* applies to the social institutions and customs, whatever their origin or quality. Hegel's claim is that *modern* ethical life, in contrast to other historical forms, realize “the concept” in the sense of a system of purposes that subjects themselves can identify with. Hegel points out, for example, that in Roman law “there could be no definition of ‘human being,’ since ‘slave’ could not be brought under it—the very status of slave indeed violates the concept of the human being; it would appear just as hazardous to attempt a definition of ‘property’ and ‘proprietor’ in many cases” (§ 2, 31/18). That is, Roman institutions were such that no clear definition of the concepts *human being* and *property*, among others, were possible. *A fortiori*, these concepts were not adequately realized in Roman institutions. Even though there was “ethical life” among Romans, this ethical life was not the realization of purposes that could be conceptually explicated. Because the basis of modern institutions, according to Hegel, is the recognition of subjectivity, these institutions are appropriately described as “realizations of the concept” in a way that others are not.

In the modern world, then, institutions of ethical life have a privileged relation to conceptuality which we will explore at greater length in what follows. From what I have said already, however, I hope a few ideas will have become clear. First, in contrast to the merely theoretical use of concepts to represent an objective world, Hegel builds on Kant and Fichte in claiming that concepts can help *constitute* an objective world. Second, Hegel's claims in the *Philosophy of Right* assume that in the modern world, the practical aims of subjects have

14 I thus do not see the “logical necessity” of the conceptual transitions of Hegel's *Philosophy of Right* as in competition with their “practical necessity,” as does James (2017b). For if *sittliche* concepts are purposive, then their logical content will also be paradigmatically practical.

already helped to constitute the institutions of ethical life. For this reason, Hegel can rely on a conceptual explication of these institutions to articulate their very nature. That is, conceptual analysis has *objective authority* in modern ethical life. We will explore this idea in the next section.

3 Social Ontology and the Objective Authority of Concepts

From what has been said so far, one might think that there is still too much distance between Hegel's conceptual practice in the *Philosophy of Right* and anything that goes by the name of conceptual analysis today for Hegel's practice to contribute to any general metaphilosophical solutions. However, Hegel's belief that the modern world already enjoys the realization of a system of purposive concepts seems to entail that commonly accessible linguistic concepts are closely connected to the purposes in question. Hegel sees the articulation of conceptually necessary purposes as going together with the exemplification of these purposes in common notions and language:

The truth is that in philosophical knowledge the *necessity* of a concept is the principal thing; and the process of its production as a result is its proof and deduction. Then, once its account has been shown in this way to be necessary on its own account, the second step is to look round for what corresponds to it in our ideas [*Vorstellungen*] and language.

GPR, § 2R, 31–32/19

Thus, Hegel does not suppose that there is a one-to-one correspondence between the representations and linguistic meanings used in ordinary life and the concepts that will be made explicit in a systematic theoretical treatment. Nevertheless, because he believes that modern subjects can be satisfied with the institutions of the modern world as *actual*, he also thinks that we can “look round” to see that these concepts are typically bound up with our current linguistic practices.

However, this view by itself may seem only to exacerbate the problem of the objective authority of concepts as described in the introduction. To reiterate, why should we take an analysis of ‘what we mean’ to be any clue to how things are? When one considers a purely theoretical context such as that of natural science, this pathway seems foreclosed. As Francis Bacon bluntly insisted in the *New Organon*: “There is no soundness in our notions whether logical or physical ... All are fantastical and ill defined” (Bacon 1999 [1620], 91, Book 1, Aphorism 15). Bacon's universal depreciation of the value of our empirically

unrefined concepts may be too extreme, but his basic point seems to hold of many putatively scientific concepts. We should not, for example, examine what lies in the concept *heat* to understand its nature. For more than likely or ordinary notion in such a case is “false, confused, and over hastily abstracted from the facts” (66). An analysis of *heat* as we commonly understand it would have no objective authority. Moreover, an improved concept of heat will not be found by a more perspicuous analysis but by a closer examination of “the facts.” And isn’t this the general case?

Not necessarily. I take Hegel’s conception of *Sittlichkeit* as the “Idea” as a way of explaining why things *are* different in some cases. We may not understand the nature of water, or quarks, or heat, even if we frequently refer to them; and it would not be incoherent to say that such things like “quarks” exist, even though *no one* correctly understands them.¹⁵ And we cannot simply introspect, or enter a Socratic dialogue, to understand such phenomena just in virtue of our implicit mastery of the terms. As Hegel writes in an illuminating *Zusatz*:

The laws of nature simply are what they are and are valid as they are; they are not liable to wither away, though they can be infringed in individual cases. To know the law of nature, we must learn to know nature itself, since laws are correct and it is only our ideas about them that can be false. *The measure of these laws is outside us.*

GPR, 15–16/6; emphasized

This feature, however, stands in contrast to the laws and institutions of ethical life. As Hegel says in the same context, here the human being “claims to have in himself the measure of what is right” (16/7). It may indeed be the case that *you* or *I* do not “understand” some institution such as, say, criminal punishment or the market. There will indeed be “clashes” regarding the nature of these institutions (*ibid.*). But it is incoherent to think that the just-mentioned institutions exist, but *no one* understands them. For, unlike the things of nature, an understanding must play a role in *constituting* these institutions.¹⁶ While in the

15 This delicate possibility is defended at length in Brandom (1994, Ch. 8, sec. IV).

16 Some readers of a more idealist or constructivist stripe might think this contrast is overplayed. They might be inclined to think that conceptual understanding is just as constitutive of natural kinds as it is for social kinds, given (e.g.) the historical and institutional role in the construction of scientific concepts. I think the quotations just provided suggest that Hegel himself recognized a distinction between the constitutive role of concepts in the natural and social worlds, despite the difficulty of explaining the line between them. However, the nature of this distinction is only relevant in evaluating the *scope* of my argument, not its basic point. To the extent that concepts are constitutive, whatever that is,

realm of nature, we posit things prior to comprehending them, in the realm of “objective spirit,” the positing of something depends on its purposive, conceptual genesis.¹⁷ For this reason, a pattern of vengeful behavior among a group of higher primates, for example, simply wouldn’t be criminal punishment, as Hegel would say (cf. § 102), because criminal punishment depends essentially on the notion of restoring “right” against an infringement (see § 97). That practice couldn’t come to be apart from an articulable *concept* of right. This is what I take Hegel to mean in seeing ethical life as an expression of the Idea. Criminal punishment exists in a way that is conceptually accountable, and this isn’t just the view of a few idealistically minded philosophers. To cease thinking this way would simply be to abandon the institution.

As I’ve said, this doesn’t mean that one can appeal directly to one’s own “intuitions” about criminal punishment to know its nature definitively—not to mention its justification. However, it does mean that a certain apparent *epistemic timidity* about the institution, what Hegel would call a “fear of error” that masks a “fear of truth” (*PhG*, § 74), is an incoherent attitude for thinkers under the sway of that institution to take. Even to speak as if we need a “theory” of criminal punishment (to stick with this example), as if it is something there to be discovered, is at best misleading.¹⁸ The institution exists in such a way that it must have a conceptual basis if it exists at all. To understand if and why the institution is justified, one must simply show, conceptually, how it follows from the concepts it is meant to realize.

Hegel’s view about modern ethical life can be put in this way: the concepts involved in modern ethical life have objective authority because they help constitute a *social ontology*.¹⁹ In contemporary terms a social ontology, roughly speaking, is the domain of objects that exists because of the way it is recognized by social actors. Though the objects of social ontology are not

they will have objective authority over their objects. This scope may be wider than the realm of *Sittlichkeit*. I think that scope is easiest to defend in the social domain, since in that case the account does not rely on a constructivist account of nature. But others can extend the scope of application as widely as they see fit. Thanks to an anonymous reviewer for pointing out the need to address this issue.

- 17 The important caveat must be added that a conceptual genesis may only retrospectively articulated conceptually. A rational purpose does not require explicit thought to be rational, but being rational, it can be explicitly thought.
- 18 Hegel disregards the suggestion that we need a “theory” of the state (*GPR*, 15/6; 26/15). He expands, “Theories [*Theorien*] are set over against what exists and are meant to appear correct and necessary in and for themselves. ... [Y]et true thought is not an opinion about the thing but the *concept of the thing itself*” (16/7).
- 19 See Krijnen (2015, 64 ff.) for further justification of the use of “social ontology” (in contrast to “practical philosophy”) in the realm of *Sittlichkeit*.

“mind-independent” in the sense that they could exist without human subjects, they are objective in the important sense that they do not depend on the imagination or desires of individual actors.²⁰ The affirmation of social ontology is in this way distinguished from the antirealism of many social constructionists, who do not limit claims of social construction to explicitly social entities, but extend the explanation to what is putatively natural.²¹ A social ontology of Hegel’s variety uses the conceptual constitution of its objects as a *distinguishing* feature vis-à-vis the natural world.

Some contemporary social ontologists are surprisingly in harmony with Hegel’s view on this matter. Even a realist and proudly commonsense philosopher such as John Searle can say of social ontology: “In a sense there are things that exist only because we believe them to exist. I am thinking of things like money, property, governments, and marriages” (1995, 1). Moreover, for Searle, such entities not only depend on our beliefs, but also on our use of language. He writes: “Language seems to be essential not only to represent these facts to ourselves; but ... the linguistic forms in question are partly constitutive of the facts” (37). Searle evidently does *not* think the same is true of facts about *water* or *quarks* (177–197). As Hegel would say, the latter are “the Idea in the form of its otherness,” or even *begrifflos*.²²

Searle’s primary explanation of social ontology involves the way that “status functions” are attributed to objects, often in the form of “constitutive rules,” forms of collective agreement that enable new social realities. His favorite example is the way a piece of paper in a centralized economy has the status function *money* through collective attribution of this status. The general formula is “*X* counts as *Y* in context *C*” (28), where *Y* names a status function (such as the exchange value of money), and *X* some material object (such as a piece of paper). Facts about money would not exist, Searle contends, without collective attribution of such status functions. Once they do, it is an objective fact that someone has a twenty-dollar bill in their wallet. It is no longer just a piece of paper. Another contemporary social ontologist, Amie Thomasson, points out a limitation of Searle’s view. Namely, Searle supposes that social entities must have some relevant *material* basis. Thomasson (2003) points out that unlike paper money, not every object of social ontology has a material basis that is

20 For a recent argument that mind-dependence does in general preclude realism about a topic, see Khalidi (2016). See also Searle (1995, 9–11).

21 For a helpful taxonomy of various conceptions of social construction, see Haslanger (2012, Ch. 2).

22 Thus does Hegel often characterize natural phenomena. Cf., e.g., *EN*, § 247Z, 25/15 and *WL*, 11, 282/536.

specifically necessary for its existence. She writes: “Corporations, laws and governments all seem to depend on the physical world for their existence, and are created by real and intentional acts of writing, voting, etc. Yet none of these abstract social entities is identifiable with some particular physical object or brute fact” (277). Thomasson does not suggest such entities could exist without a physical world at all, but that no specific material basis constitutes the entity. A law can be written in stone, communicated on the internet, or be merely verbal. Yet no specific material form is necessary for it to exist.

Thomasson’s de-materializing of Searle helps corroborate Hegel’s view that concepts can have near-complete authority in the realm of social ontology. Concepts do not only merely *represent* the world; some concepts also *constitute* the world. While one cannot assume that the analysis of a conceptual representation reveals the nature of the entity the concept represents (like water or heat), one can assume that the analysis of a *constitutive* concept can do so. In such cases, concepts have an ontological hold on the things themselves, and the things themselves also have an epistemic “transparency.” That is to say that there is no gap between what potential knowers know about social objects and what the objects are. As Thomasson writes:

[F]acts of these kinds remain conceptually transparent; indeed certain facts about the nature of the kinds of social entities constructed by means of the last two kinds of rules must be known ... Since those rules *establish* the relevant conditions, they must be correct. Thus nothing of the kind S can exist without there being S-regarding beliefs (indeed without members of the relevant society collectively knowing of certain sufficient conditions for something to be S, or for there to be an S).

THOMASSON 2003, 283

Since conceptual knowledge is constitutive of the object, some conceptual knowledge of the object must always be extant.

On this point, speaking generally, we have already seen that Hegel agrees wholeheartedly. In the realm of ethical life, human subjects are the “measure” of what is, and concepts express the thing itself, or its nature or essence. One might even wonder what prevents contemporary social ontologists from speaking again of “absolute knowledge.” For they admit that in social ontology, as Hegel says, “knowledge no longer needs to go beyond itself, ... knowledge finds itself, and the concept corresponds to the object and the object to the concept” (*PhG*, § 80, 74/38). Even if one avoided talk of absolute knowledge, it is clear that conceptual analysis has objective authority in social ontology. One does not even have to be an “idealist” to see this. Or perhaps recognizing

this fact is already sufficient to become something of an idealist.²³ What is clear is that concepts in ethical life need not exhibit the deference required by scientific theories.

4 “Essentially Contested” Concepts and Intersubjective Authority

Concepts can have objective authority in social ontology because concepts constitute the objects in question. However, “concepts” in this case are articulated purposes, and the purposes that are realized in extant social institutions cannot simply be assumed to be available to each individual served by (or indeed subjugated to) those institutions. It would be trivially possible in the case of every institution, even evil or largely irrational ones, to identify *some* concept or purpose as realized therein, but in many cases these concepts will not be recognized by the relevant individuals. How then do the concepts of modern social life—and therewith the philosophical explication of them—have intersubjective authority as well? How, namely, can I and you treat the articulation of a concept as something binding on us?

As I mentioned above, this problem is recognized in contemporary discussions of conceptual analysis, which often suppose that conceptual analysis proceeds by examining individuals’ “intuitions” on a subject matter. For example, whether the concept *person* or *self* should be seen as including the body or only mental states or memories is seen to rely on our intuitive reaction to certain thought-experiments involving body swaps or uploaded minds. Unfortunately, ordinary individuals have different intuitions in many such cases. Even or especially so-called experts (professional philosophers themselves) cannot agree about the analysis of concepts considered in this way.²⁴ Even if there were agreement, it is unclear that this should be treated as anything but psychological uniformity, rather than evidence of truth.

If the privileged site of objective conceptual authority is that of Hegelian social ontology, however, this problem can be seen in a different light. Hegel’s

23 Hegel’s view is also *rationalist* in a way that distinguishes him from Searle and Thomasson, though space does not permit a detailed account of this feature. Suffice it to say that for Hegel, an institution following a single constitutive rule does not make it “conceptual” *qua* rational. For an institution to be genuinely rational, for Hegel, is not only for it to be individually dependent on human thought, but for it to find a place together in a system of reasons or norms that is *right* as such. This means the conceptual explication of *right* must take a systematic form.

24 See Weinberg et al. (2010) for a discussion and criticism of the “expertise defense” of philosophical intuitions.

conception of the realm of ethical life requires on the one hand that concepts are objectively realized, so that the social world is actual and enduring apart from the whims of individuals. But it also depends on the fact that objective institutions are the realizations of concepts that individuals can recognize as expressing their own purposes. Much as Hegel is reputed as an anti-individualistic thinker, I think the concepts he attempts to articulate as constituting modern ethical life are precisely those which he wagers as satisfying the considered purposes of the citizens of modern states. But this is also to admit that the concepts of Hegel's political philosophy are expressed in the full knowledge that they are "essentially contested."

I will explain the connection of Hegel's philosophical practice with the notion of an essentially contested concept more directly in a moment. First it is worth making clear that Hegel sees the system of concepts he articulates in the *Philosophy of Right* as in some sense *answerable* to the purposes of modern individuals. To be sure, Hegel is often dismissive of the unreflective "opinions" and reactions of modern individuals, and he is unconvinced that a purely democratic basis for modern ethical life is possible or desirable (cf. *GPR*, § 308R). However, Hegel also firmly acknowledges that the assent of the "subjective will" of individuals is essential to ethical life. "In right," Hegel contends, "the human being must encounter his own reason ..." (17/7/Preface Z.). Moreover, "the highest right of the subject" is "the right of giving recognition only to what my insight sees as rational" (§ 132R, 245/127). Accordingly, speaking of the laws and institutions that flow from ethicality, he writes: "[T]hey are not something alien to the subject. On the contrary, his spirit bears witness to them as to *its own essence*, the essence in which he has a *feeling of selfhood* [*Selbstgefühl*], and in which he lives as in his own element which is not distinguished from himself" (§ 147, 295/155). The very aim of the philosophy of right, to recall, is to show what is required for the realization of concrete freedom. Even if this freedom is not conceived individualistically, it is freedom *of* individuals nonetheless. As Robert Brandom (2019, 11–16) argues, the normative statuses constitutive of modern ethical life (including rights and privileges) are ultimately instituted by the normative *attitudes* of modern individuals. Without those subjective attitudes, no modern institutions. The passage above even implies that the *feelings* of individuals (though not themselves responsible for institutions)²⁵ should be importantly in line with true ethical life. Though individuals may not be prepared at every time to consciously recognize when their freedom is

25 E.g., Hegel's polemic against J.F. Fries, *GPR*, 18–19/9–10/Preface.

realized in the fullest sense, the realization of their freedom is the measure of genuine ethical life.²⁶

Thus, while Hegel does not have a subjective conception of the good, he demands that the good is subjectively satisfying. There is not only a purely systematic criterion of adequacy for Hegel's practical philosophy, but also the 'external' criterion of adequacy of the conformity of individual wills to the conceptual system as articulated. Despite Hegel's occasionally paternalistic tone on such matters, it cannot be simply *stipulated* that the modern state satisfies the individual's desire for concrete freedom; this must be recognized in the actual reactions of subjects of modern states to the institutions in which they find themselves. That is, Hegel's own conceptual explication of the nature of modern ethical life must be accountable to the normative attitudes to modern subjects. In terms of our present problem, this means that the concepts of social ontology can have objective authority only if they also have intersubjective authority. Part of what it means to provide a correct analysis of *marriage*, for example, is to give an analysis that is compelling for all those who will live under it.²⁷ Here is what I mean by saying that the concepts of Hegelian ethical life are "essentially contested."

The notion of "essentially contested concepts" was introduced by the twentieth century Scottish philosopher W.B. Gallie (1912–1998) in a 1956 paper intending to explain the persistence of philosophical controversy. Concepts like *art*, *justice*, and *democracy*, Gallie claimed, are essentially contested because (among other reasons) they are both *appraisive* (they mark something as good or bad) and because they are involved in ongoing development that has no sharply defined end goal.²⁸ To call something "art," Gallie contends, is to use a term contestably, since one is staking a claim to the work as carrying out goals of the practice of art that are only agreed upon to a minimal degree. There is no final court of appeal (an ultimate critic) for art, nor could there be. Now compare "freedom" as applied to a political regime. Like "art," "freedom" designates so inchoately a political goal that it can be used to promote a spectrum

26 Hegel implies it is "the position of *everybody*" who live in the modern state (though not everyone consciously) that they "find satisfaction there for their knowledge and volition" (*GPR*, 16/8/Preface).

27 This example is pertinent in the United States, given the way participants appeal to "definition" in recent debates surrounding marriage equality. See, e.g., Corvino and Gallagher (2012, 39 ff.; 102 ff.).

28 The historical nature of an essentially contested concept is important to Gallie's account (as it would be to Hegel's), but I will largely abstract from that here. See Evnine (2014) for more thorough account of Gallie's notion of an essentially contested concept that emphasizes the historical dimension.

of practices or institutions, including some evidently aberrant ones, however unfortunately. It is not *obviously* incorrect when an Orwellian totalitarian speaks of the “freedom” he has brought to a people; surely he can point to some descriptive similarity between his regime and common usage, so that it is not merely an equivocation. It is a way of “contesting” the concept for one’s own purposes. According to Gallie, one could not use such a concept without promoting some such appraisal.

In a similar way, Hegel admits that the general concept of right (and freedom therewith) that structures his account of ethical life is indeterminate at the outset. The realization of freedom involves “the transition from undifferentiated indeterminacy to the *differentiation, determination, and positing* of a determinacy as a content and object” (§ 6, 52/30). What concepts and institutions adequately determine and specify *freedom* is in part a matter of how well they are evaluated as satisfying this inchoate concept. This does not mean that an arbitrary evaluation is possible. Indeed, Hegel thinks that subjects will see that precisely his account shows what kind of rational self-evaluation *necessarily* requires.²⁹ But the necessity of the account does not preclude its essential contestability. It is arguably a defining feature of the modern liberal state that its citizenry is comprised of ‘contesters’. Modern individuals are “negative” subjects, who can subject the claims of freedom to criticism.³⁰

The authority of *sittliche* concepts is thus measured (and contested) not only objectively but also by the standards of the concept-users themselves. What does this mean about the problem of the intersubjective authority of conceptual analysis? If a concept were merely representational, it would be odd indeed to pay attention to individual differences in intuitions concerning the use of that concept. The representational use of a concept is supposed to be answerable to the object being represented, not to the representers. Thus, a deviance among individual intuitions is most easily explained as a failure of correct representation on the part of some of them. However, a deviance among the

29 Recall: “The truth is that in philosophical knowledge the *necessity* of a concept is the principal thing; and the process of its production as a result is its proof and deduction” (*GPR*, § 2R, 31–32/19).

30 It is true that Hegel does not outline a substantial role for the dissent of individuals (see de Boer 2018). This is largely because of his desire to avoid letting particular interests determine the nature of institutions, which are meant to serve universally. Nevertheless, his lack of allowance for individuals to exert concrete political pressure in the state is not incompatible with the need for institutions to be rationally accountable to individuals. See James (2017b, 187 ff.) on the way that subjective attitudes may be transformed in the transition from civil society to the state proper. Education in a state, on Hegel’s view, must be devoted to leading individuals to “identify” with the universal *qua* state.

intuitions for essentially contested concepts are significant for the content of those concepts. For here the content will be the same only where the goals and appraisals of the participants are the same. Difference among participants is in this case not necessarily a mark of the failure of some of them, but a failure of the practice (or the representation of it) to be compelling to all participants.

Unlike the problem of conceptual analysis' objective authority, the problem of its intersubjective authority (in the realm of *das Sittliche*) does not seem, then, to be primarily a philosophical problem, but a pedagogical and political one. Since the phenomena in question are subject to change in light of changing attitudes of participants, the conceptual explication of the phenomena can only be unified if the institutions succeed in being rationally satisfying to the participants. Hegel thinks the modern world can be satisfying in that way, but whether he is right or wrong, his view implies that conceptual authority is subservient to the tacit authority of modern individuals. This means that in some cases, unless a prior conviction among individuals holds sway, there may be no use in a philosophical explication. This should not be surprising, given Hegel's view that philosophy "always comes too late on the scene" to provide instructions for how the world ought to be (*GPR*, 28/16). There are clear limits, then, to the value of conceptual analysis. It cannot produce conviction *ex nihilo*. However, it still has a pedagogical role.³¹ It provides a reconciliation "to those in whom there has once arisen an inner voice bidding them to *comprehend* [*begreifen*], and not only to preserve their subjective freedom in what substantially is, but also to stand with their subjective freedom in that which is in and for itself" (27/15; modified). This, of course, provided that subjective freedom has already become something substantial. Participants in modern institutions must assume this has taken place, but they are also its ultimate source.

5 Conclusion

Hegel shows how a 'conceptual conception' of philosophy may address two sides of an outstanding problem of conceptual authority. Most accounts of

31 On this score, the reader may recall Hegel's (egalitarian) pedagogical ambitions in the *Phenomenology of Spirit*: "The intelligible form of science is the way to science, open to everyone and equally accessible to everyone, and to attain to rational knowledge through the understanding is the just demand of the consciousness that approaches science" (§ 13, 20/9). Hegel's phenomenological pedagogy is evidently an attempt to lead the reader to identify with the historical transition to the modern world. Consciousness now can "turn to its own world and present [*Gegenwart*], discover it as its property" (§ 803, 586/318).

conceptual analysis assume that the content of a concept is a representational function, and this raises the problem of the relation of these representations to the truth. But Hegel contends that in the realm of ethical life, conceptual content is constitutive of the phenomena. To the extent that this is true, we should not concede that the concepts we inherit about the social world are only contingently related to things. Rather, we have reason to expect that a conceptual explication will tell us how things are with ethical life. For our concepts express the purposes that have been realized in ethical life. However, since modern ethical life is meant to be structured by institutions that are rationally satisfying to individuals, the contestation about conceptual content among individuals is an essential feature of philosophy in the modern world. Though I have referenced contemporary philosophers whose views are parallel to Hegel's on a number of points, Hegel's combined appreciation of the constitutive dimension of conceptual content, along with the special pedagogical and political problem that it creates in the modern world is unique indeed. Likewise, even where philosophers allow for the important dimension of artifactual or social concepts in philosophy, Hegel's way of prioritizing the realm of *Sittlichkeit* in philosophy is still unmatched. Contemporary philosophy struggles to explain the value and 'authority' of conceptual analysis precisely because it marginalizes the human world in favor of the natural. Hegel's use of the concept of ethical life shows that concepts have authority not because we impose them on the world, but because part of the world is their product—and ours.

Abbreviations

Fichte is quoted according to the German edition created by Immanuel Hermann Fichte:

FW Fichte, Johann Gottlieb. 1845–46. *System der Sittenlehre*. In *Johann Gottlieb Fichtes sämtliche Werke*. Edited by Immanuel Hermann Fichte, vol. 4. Berlin: Veit und comp; English translation: *The System of Ethics*. Edited by Daniel Breazeale and Günther Zöller. Cambridge: Cambridge University Press, 2005.

Hegel is quoted according to volume and page numbers of the German *Werkausgabe* [W] and according to English translations as listed below.

W + vol. Hegel, Georg Wilhelm Friedrich. 1969 ff. *Werke in zwanzig Bänden*. Edited by Eva Moldenhauer and Karl Markus Michel. Frankfurt a.M.: Suhrkamp.

- EL* *Enzyklopädie der philosophischen Wissenschaften I. Werke*, vol. 8; English: *The Encyclopaedia Logic*. Translated by Theodor Francis Geraets, Wallis Arthur Suchting, and Henry Sifton Harris. Indianapolis: Hackett Publishing, 1991.
- EN* *Enzyklopädie der philosophischen Wissenschaften II. Werke*, vol. 9. *Philosophy of Nature*. Translated by Arnold Vincent Miller. Oxford: Oxford University Press, 1970.
- GPR* *Grundlinien der Philosophie des Rechts. Werke*, vol. 7; English: *Outlines of the Philosophy of Right*. Translated by Thomas Malcom Knox, revised by Stephen Houlgate. Oxford: Oxford University Press, 2008.
- PhG* *Phänomenologie des Geistes. Werke*, vol. 3; English: *The Phenomenology of Spirit*. Translated by Michael Inwood. Oxford: Oxford University Press, 2018.
- WL* *Wissenschaft der Logik, I & II. Werke*, vols. 5–6.; English: *The Science of Logic*. Translated by George di Giovanni. Cambridge: Cambridge University Press, 2010.

Kant is quoted according to volume and page numbers of the German *Akademieausgabe* [Ak.] and according to English translations as listed below.

- Ak.* *Kants gesammelte Schriften*. Edited by Königlich-Preußische Akademie der Wissenschaften. Berlin: Reimer/de Gruyter, 1900 ff.
- Ak. 5* *Kritik der praktischen Vernunft*. English translation: *Critique of Practical Reason*. Translated by Mary Gregor. Cambridge: Cambridge University Press, 1997.
- KrV* 1st ed. 1781 (A) = *Ak. 4*
 2nd ed. 1787 (B) = *Ak. 3*
 English translation: *Critique of Pure Reason*. Translated by Paul Guyer and Allen Wood. Cambridge: Cambridge University Press, 1998.

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Slaves to Habit: the Positivity of Modern Ethical Life

Bart Zantvoort

Denn wer mit Recht gewohnt war, auf seinen Verstand zu vertrauen, dem wird, wenn dieser sich trübt, das gewohnte Vertrauen zu einer großen Gefahr ...

THOMAS MANN, *Joseph und seine Brüder*

• • •

Die Gewohnheit des Rechten überhaupt, des Sittlichen, hat den Inhalt der Freiheit.

HEGEL, *EPG*, § 410 Z

• •

Today, it seems no exaggeration to say that we are obsessed with habits. Where once we might have believed we could liberate ourselves radically from tradition and freely choose our own path in life—a sentiment common to the great political revolutions of the last two-and-a-half centuries, to existentialist philosophy, and to the beat and punks, hippies and *soixant-huitards* of more recent countercultural movements—today we believe the only way we can achieve happiness and self-fulfillment is by carefully regulating our habits. There are so many bad habits we need to ‘kick’: addictions to drugs, to eating (or not eating), to sex, porn, smartphones or any of the things we can be addicted to these days. But there are also plenty of milder habits, which we would nevertheless desperately like to be able to control: procrastination is a bad habit, so is going to bed late, losing your temper, showing up late for appointments ...

Yet if we feel ourselves weighed down, on the one hand, by the dead weight of our accumulated bad habits, popular culture today also recognizes that

the way to health, happiness and success is through the cultivation of 'good' habits. It's not for nothing that one of the most successful self-help books of all times is called *The Seven Habits of Highly Effective People*. We have become habituated to the idea that we are not free, that we are not rational (as many other popular science books attest), and that the only way to more or less control ourselves is by subjecting ourselves to careful regimes of self-habitation. We cannot be trusted to make the right decisions, so we need to automate our good behaviors; make it a habit to think positive thoughts, have your spinach smoothie every morning and turn on the app that limits your smartphone use.

More than ever before, habit has become a matter not just of individual psychology or lifestyle, but also a highly problematic social and political concept. Half-way between consciousness and unconsciousness, thought and thoughtlessness, reflection and animal instinct, self-determination and subservience, habit is both what makes us capable of free, rational action and what shackles us to natural necessity. Through habit, we shape ourselves into the kind of person we want to be, but habit also ties us to our past self and becomes a danger when we face changed or unexpected circumstances. Social habits, or customs, are the grease that keeps the social machine moving, but also keeps it grinding on, obstinately applying obsolete methods to unprecedented social and environmental challenges.

The dual nature of habit has long been a concern for philosophy, and perhaps no one has expressed it more powerfully than Hegel. Habit, Hegel writes in the 'Anthropology' section of the *Encyclopaedia Philosophy of Spirit*, "is a difficult point in the organization of spirit"; in fact, it is "one of the most difficult of determinations" (*EPS*, § 410). "On the one hand," we find Hegel saying in the addition to the relevant paragraph, "man is freed by habit," yet "he is also enslaved by it" (§ 410 Z). It is difficult to conceptually determine the notion of habit, not just because of its fundamental ambiguity, but also because we are habituated to habit, because we have a particular fixed notion of it which prefigures our understanding: "We are accustomed to the idea [*Vorstellung*] of habit; none the less to determine the Notion of habit is hard" (§ 410 Z).

Habit is a key concept in what Hegel calls anthropology, in understanding the formation of the human body and psyche in its relation to the outside world. But in essence, understood as second nature and as the source of both our freedom and our enslavement, habit is an eminently political concept. In the *Philosophy of Right*, Hegel famously defines ethical life in terms of habit as second nature, claiming it is the very life, origin and presence of

Spirit: “The ethical [*das Sittliche*],” he writes, “appears as custom [*Sitte*]; and the habit of the ethical appears as a second nature which takes the place of the original and purely natural will and is the all-pervading soul, significance, and actuality of individual existence. It is spirit living and present as a world, and only thus does the substance of spirit begin to exist as spirit” (*PR*, § 151).

To explore the political import of Hegel’s notion of habit and its ‘enslaving’ effects, we will need to show how habit is linked to one of the central concepts of Hegel’s early philosophy, the notion of positivity. Modern ethical life is embedded in institutions, codified laws, and social customs which form our second nature. Institutions, laws and customs are social habits; we need them because, according to Hegel, it is only through them that we can be free. Yet at the same time, the enduring and objectified character of institutions means that they are vulnerable to the problem of what Hegel calls ‘positivity’: institutions become obsolete and separated from the interests and aims of society, and therefore actually become an obstacle to freedom. In elaborating this idea, we need to make explicit the continuity of this line of argument from Hegel’s discussion of habit in the ‘Anthropology’ to the *Philosophy of Right*, and from the notion of positivity in his early writings to the notions of habit and ethical life in his mature writings.

Hegel has often been thought to argue that the modern form of ethical life, where freedom and reflexivity are embedded in the institutions and practices of the modern state, escapes the problem of the positivity of institutions and laws and the enslaving effects of habit. I will argue, on the contrary, that the modern state does not successfully solve or sublimate the problematic aspects of social habit, and that its ‘mechanistic’ and ‘enslaving’ effects continue to affect modern social and political life—in fact, it may even be the case that modern ethical life is particularly vulnerable to this kind of ‘enslavement,’ because it is affected by forms of positivity which are specific to modernity.

To do so, I will first offer an extensive exploration of the dual nature of habit in Hegel’s ‘Anthropology,’ followed by a brief consideration on the various interpretations of habit in Hegel’s philosophy and its relation to modernity. I will then show how this dual nature of habit as enslaving and liberating also underlies Hegel’s understanding of institutions, laws and customs understood as a form of social habit, and how therefore the problem of ‘positivity’ can be understood as a concern with the enslaving aspect of habit. Finally, I will argue that positivity, understood in this way, is an enduring concern that continues to be an issue for Hegel into his mature philosophy and also affects his portrayal of the modern state.

1 Two Sides of Habit

The two sides of habit, its ‘freeing’ and its ‘enslaving’ aspects, have both long been recognized in the philosophical tradition.¹ The ‘positive’ view of habit can be traced back to Aristotle, and the ‘negative’ view, while not exclusive to him, is certainly expressed most forcefully by Kant.

Aristotle claimed that virtue depends on having a certain kind of stable disposition, a ‘state’ or *hexis* (often translated as habit, via the Latin *habitus*). “Virtue of character,” Aristotle writes, “is a result of habituation [*ethos*]”: to become virtuous, we need to practice being virtuous, to internalize virtuous behavior, to make it into a stable state. And in politics, too, “legislators make the citizens good by habituating them” (*NE*, II.1).

Habit, for Aristotle, acts as a stabilizing force, shaping character through the repetition of mere passing acts or sensations. From Aristotle to Hegel to Ravaisson and Deleuze, this notion of habit is developed as a veritable ontological principle that shapes human beings, society and ultimately (for Ravaisson) all of nature.² In line with this tradition Hegel argues that through habit, we acquire not just moral virtues, but the skills and dispositions that are the essence of what makes us human: standing upright, exercising our will, playing music, speaking, thinking.

For Hegel too, therefore, habit encompasses much more than what we typically call ‘habits,’ i.e., engrained regularities in our behavior which we have acquired, more or less consciously, through simple repetition, imitation, education, or conscious self-habituation. Following the French anatomist Bichat,³ Hegel sees habit as a core organizing principle of living organisms: through repetition, the organism internalizes key patterns of behavior, turning them into ‘second nature,’ into routine actions that are removed from the sphere of active willing or conscious reflection. While habit proper, as Hegel discusses it in the *Anthropology*, is located at the boundary between natural functions and ‘higher’ functions such as speaking, thinking and willing, its internalizing mechanism extends ‘downwards’ into the history of the natural development

1 For a useful overview, see Carlisle (2014).

2 See e.g. Ravaisson (2008); Deleuze (2004), 95: “A soul must be attributed to the heart, to the muscles, nerves and cells, but a contemplative soul whose entire function is to contract a habit ... habit here manifests its full generality: it concerns not only the sensory-motor habits that we have (psychologically), but also, before these, the primary habits that we are; the thousands of passive syntheses of which we are organically composed.”

3 Hegel discusses Bichat in *EPS*, § 398Z and refers to him extensively in the *Philosophy of Nature*; see also Harris (1997), 547, note 51.

of the organism and ‘upwards’ into the higher forms of consciousness and spirit, reason, language and memory, and into the realm of ‘objective spirit’: intersubjectivity and politics.⁴

Habit allows the organism to automate and integrate its natural functions, turning them into building blocks that allow for more complex patterns of behavior. If Hegel says we are ‘freed’ by habit, it is because we can only exercise our higher capacities for thought and reasoning by consigning our baser natural functions to what Nietzsche (1969, 57–8) called “the underworld of the utility organs”: in the history of the development of the species, which is partly repeated in the development of each individual, functions like digestion, breathing, posture, or sensation have largely become part of our biological make-up or instinctive behavior, and thus do not require active attention.

This can be seen most clearly in Hegel’s description of thought’s dependence on habit. It is not simply that we need to be trained to think, to make reflection a habit, to learn to step back from our ordinary involvement with the world, though this is certainly a part of it. No, the entire machinery of our body and mind needs to be integrated and automated to put our nature at a distance and clear a space for thought; it is only through habit that the complex interaction between the various parts of the mind is calibrated and coordinated. Standing upright, seeing, thinking and all our other faculties are determined by habit in this way:

Without mediation, concrete habit unifies the diverse determinations of sensation, consciousness, intuition, understanding etc. into a single simple act. It is the same with thought which is free, active within its own pure element, for it is constantly in need of habit and familiarity, the form of immediacy which makes it the unhindered and permeated possession of my single self. It is through this habit that I first exist for myself as a thinking being.

EPS, § 410

However, for Hegel, habit is far more than a useful automating function, a kind of cruise control that allows us to focus on other things than our body. As the “mechanism of self-awareness [*Selbstgefühl*],” habit is the birthplace of the ‘I’ and of consciousness: it is through habit that the self is wrested from

4 This is the topic of the later parts of the *Philosophy of Spirit*. On the relation of habit to nature, see Malabou (2005), 59: “Hegel’s entire *Philosophy of Nature* is organized according to the logic of this contraction. Hegel intends to show how the living organism summarizes everything that precedes it: inert matter, the elements, chemical processes ...”.

its immersion in its natural surroundings and first becomes ‘for itself,’ able to relate to itself as an enduring, active subject (§ 409). In its purely natural functions (sex, eating, sleeping, etc.) and in its sensations, feelings and desires, the self is either not self-aware at all or immediately identifies itself with a particular feeling or desire, without conceiving of itself as a separate subject. Habit weakens the influence external circumstances (such as heat and cold) have on us through repeated experience; it makes us less of a slave to our desires by numbing our drives; and by allowing us to learn skills, it turns our bodies into a tool that can express our will (§ 410). Habit allows us not to be determined by our determinations, but take up a reflective stance towards them; it turns our feelings and the content of our consciousness into our property (*Besitz*) (§ 410), into merely accidental properties (*Eigenschaften*) (§ 410 Z) of a subject, thus properly bringing the subject into being. Habit introduces a split within the self, ‘idealizes’ it, creating an interiority unaffected by our environment which opens up the space for reflection and freedom:

The soul in this way *possesses* the content, and contains it in such a way that in these determinations it is not sentient, nor stands in a relationship with them as distinguishing itself from them, nor is submerged [*versenkt*] in them, but has them without sensing or being conscious of them and moves within them. It is *free* from them, insofar as it is not interested in them and occupied with them, and while existing in these forms as its possession, it is at the same time open to be otherwise occupied and engaged, with sensation or with the consciousness of the mind in general.

EPS, § 410, translation altered

However, as was already mentioned, habit does not merely liberate; it also enslaves us. If habit sets us free, it is also that which dulls our senses, shuts down our judgment and stops us from thinking. Precisely because when we act out of habit, we do not think about what we are doing, habit can make us do the wrong thing at the wrong moment, it makes us unable to adapt properly to the given situation, it makes us irresponsible and unresponsive, slavishly following the course of action our body prescribes for us. This is the danger of habit, and it is precisely why Kant, in his *Anthropology*, condemns habit in the strongest possible terms: Habit “is a physical inner necessitation to continue behaving in the same way we have behaved thus far”; it “deprives even good actions of their moral value because it detracts from our freedom of mind; moreover, it leads to thoughtless repetition of the same action (mechanical uniformity) and so becomes ridiculous ... As a rule, all habits are objectionable” (Kant 1974, 148–9). Since, for Kant, an action can only count as good if it is done in full awareness

of the moral law—by determining your will each and every time through rational reflection—there can be no such thing as a good habit, because habit is by definition thoughtless.⁵

Although he values habit far more positively, Hegel is deeply aware of its dangerous side. In claiming that habit enslaves us, Hegel contrasts it with pure thought, the true locus of freedom. In contrast with the concrete universality of pure thinking, habit can only attain to “abstract universality,” since it is an unreflected repetition of the same act, it is “mechanical”; although it is a second nature, it is still “never anything but a nature ... burdened with the form of being.” “It is therefore something which does not correspond to the freedom of spirit, something merely anthropological” (*EPS*, § 410 Z).

If we elaborate on this a little, we can see that the danger of habit has two sides, which, following Hegel, we could call habit as ‘mechanism’ and habit as ‘death’. These two sides correspond to its two positive functions (automating behaviors and creating a space for freedom by raising the subject out of its ‘immersion’ in nature).

Firstly, like Kant, Hegel conceives of habit as a mechanism, something which excludes the presence of thought and therefore self-determination. If we do not think for ourselves, we are at risk of becoming slaves either to natural necessity, or to the authority and laws of a society which may well be illegitimate or unjust. From his early writings onwards, Hegel uses ‘mechanical’ in this way as a term of disparagement. Yet while he seems to continue to do so here, the mechanism of habit is at the very same time what makes freedom possible. While in his early writings ‘mechanism’ is used purely negatively, in the *Anthropology* it has received a necessary and highly important, though still subordinated position.⁶

Secondly, habit as death. As we have seen, it is through habit that the individual subject first becomes an individual with the capacity for deliberation and free action. But it is also habit, Hegel maintains, which causes the individual to be ‘resubmerged’ in nature and be stripped of its individuality. “It is the habit of living which brings on death, and which, when completely abstract, constitutes death itself,” Hegel says (*EPS*, § 410). How is this to be understood?

At this point, it will be useful to recall Bichat’s famous definition of life: “Life is the totality of those functions which resist death.”⁷ Life depends on a productive tension between the organism and its surroundings, on the creation

5 Ibid., 147: “[V]irtue is moral strength in adherence to one’s duty, which never should become habit but should always emerge entirely new and original from one’s way of thinking’

6 On this topic, see Ross (2008).

7 Bichat (1977), see also Malabou (2005, 59).

of an interior space—literally, through the membrane of the cell or the skin of the animal—which can differentiate itself from the natural environment. This interior space is constructed through the contraction of vital functions by habit, understood in the very general sense described above. Hegel calls this a process of ‘internal self-formation’ (*Sichseinbilden*): the ‘internal self-formation of the particular or the corporeal of the determinations of feeling in the *being* of the soul’ (§ 410). To live, the individual has to assimilate parts of its environment, differentiate itself from it, and resist being itself assimilated by its environment.⁸

However, if habit allows the individual to ‘construct’ itself, it is at the same time the process through which the individual becomes reconciled with its surroundings and thereby loses its individuality. Maine de Biran writes: “Reflection, in the physical as in the moral sense, requires a point of support, a resistance: but the most common effect of habit is to take away all resistance, to destroy all friction.”⁹ Hegel, too, sees habit in this light, as the overcoming of resistance. First, the resistance of the body is broken by habit, to turn the body into an effective tool for the expression of our will. The body is made fit to express a particular purpose, the purpose is, as it were, ‘built into’ the body (*Einbilden*), so the body can express it efficiently, without encountering resistance: “In skills, corporeity is penetrated and made into an instrument in such a way that the representation inside of me (such as a series of notes) has been expressed by the body fluently and without resistance” (*EPS*, § 410, translation altered). In general, habit is the process of the ‘idealization’ of the body: “In itself, matter has no truth in the soul; as being-for-itself, the latter separates itself from its immediate being and opposes it to itself as corporeity, which can offer no resistance to the soul’s forming itself within it [*die ihrem Einbilden in sie keinen Widerstand leisten kann*]” (§ 412, translation altered).

This is a general principle of Hegel’s philosophy: matter and particularity cannot resist the integrating, assimilating activity of ideality and universality (*SL*, 826; Ruda 2018). Yet at the same time, the realization of the ‘concrete universal’ is only possible through the resistance of the particular, which generates the productive contradictions which spur the development of spirit. Overcoming resistance is only possible if there is real resistance, just as the identity

8 The development of consciousness and spirit in the *Phenomenology* can be shown to follow the same logic of resistance and overcoming resistance, for example in the discussion of desire and lordship and bondage.

9 Maine de Biran (1970, 47). Although Maine de Biran’s work was originally published in 1802, as far as I have been able to establish Hegel was not familiar with it, but Bichat was a mutual influence.

of the absolute is possible only on the basis of real difference. Although habit is thus only an example of this logic, it shows it in all its complexity. For if habit is supposed to turn the body into a 'frictionless,' perfect tool for the expression of the will or the soul, this process can really never be frictionless, and the body is in fact worn down, worn out and eventually discarded, after which spirit continues its formative process in other bodies.

Habit's 'breaking down' of individuality and of the individual's body is what constitutes the transition to ethics, to social life. For if habit's sanding down of the individual's idiosyncrasies and the resistance of the body allows for the effortless expression of one's will, it also allows the individual will and body to be integrated with the least amount of friction in the social body as a whole. Through habit instilled by education, the individual is 'housebroken' and turned into a part of the social mechanism:

Education [*Pädagogik*] is the art of making human beings ethical: it considers them as natural beings and shows them how they can be reborn, and how their original nature can be transformed into a second, spiritual nature so that this spirituality becomes *habitual* to them. In habit, the opposition between the natural and the subjective will disappears, and the resistance of the subject is broken; to this extent, habit is part of ethics ... Human beings even die as a result of habit—that is, if they have become totally habituated [*eingewohnt*] to life and mentally and physically blunted, and the opposition between subjective consciousness and mental activity has disappeared.

PR, § 151 Z. See also *EPS*, § 396 Z and § 410

If an individual is fully educated, that is, fully habituated—'grown up,' so to say—its desires and impulses (the natural will) are completely brought into line with its socialized subjective will. I learn to desire only what I *should* will, that is, I learn to desire doing my duty, which is the expression of my 'substantial freedom' (*PR*, § 412). But if the individual completely identifies with its duty, that is, if it becomes completely identified with its social role, it has nothing left to will, its energy is spent, and in fact its behavior becomes mechanical: "For they are active only in so far as they have not yet attained something and wish to assert themselves and show what they can do in pursuit of it. Once this is accomplished, their activity and vitality disappear, and the loss of interest which ensues is spiritual or physical death" (*PR*, § 151 Z, translation slightly altered). We find here an echo of Hegel's discussion of Kantian morality in the *Phenomenology of Spirit*: morality is premised on establishing a harmony between natural desires and duty and between duty and happiness, but if it were

to achieve this goal, morality would destroy itself, because the very notion of duty only make sense if we are capable of *not* doing our duty, if we are free to choose (PS, 368).

Habit thus appears, on the one hand, as the organizing force of human subjectivity and the principle of its development, and on the other hand as a force which uses up human beings and wears them away. As Catherine Malabou (2005, 70) puts it: “[I]f habit represents the dulling of life which gradually weakens the power of resistance and dynamism itself, it constitutes at the same time, in the course of its development, the vitality and persistence of subjectivity.” When there is nothing left to will or to desire, consciousness returns to the unity with nature from whence it came. The important thing to note, however, is that these two sides are not separate aspects of habit, but that it is one and the same movement. The process of formation which empowers consciousness with skills and faculties and which shapes individuals and society into an effectively functioning community is the same process which wears them out, destroys their individuality and returns them to equilibrium with their environment. As we will see, this characteristic of habit is a case of a more general principle inherent, according to Hegel, to the process of determination which constitutes the development of social-historical structures.

2 Habit in Modernity

Before turning to the question of the political import of habit, let me briefly discuss the status of the notion of habit within Hegel's philosophy and its relation to modernity. The main question here is: what is the ultimate place of habit in modern ethical life, given the dangers and problems Hegel associates with it? Is habit to be completely eliminated (as Kant seemed to desire), or are its negative effects to be remedied and compensated for? Or is habit, with all its dangers, in fact an inescapable element even, or even especially, in modern societies?

Some commentators have suggested that for Hegel habit, because of the problem of a lack of reflection attached to it and its ‘enslaving’ character, must be a stage in the development of the individual and of culture which is overcome in modern ethical life.¹⁰ In modern ethical life, the culture into which an individual is habituated, the norms according to which she is raised,

10 See Siep (1983); McCumber (1990); Lewis (2008). See Novakovic (2017, 37) for a discussion. Lumsden (2012, 239) claims Wood also expresses this view in *Hegel's Ethical Thought* (1990), but that does not seem to be the case.

and the institutions which guide and shape her life are themselves rational. So even if the individual does not reflect on her actions but acts out of habit, the rationality of the prevailing norms and structures ensures that her actions are by and large rational. The way to become ethical, Hegel writes, citing “a Pythagorean,” is by becoming the citizen of a state with good laws (*PR*, § 153 and § 153 Z).

Understood in this way, modern ethical life and the modern state as described by Hegel would thus be the ‘solution’ to the problem of habit. It would overcome both the problem inherent in an Aristotelian account of virtue, namely that virtue on such an account is naturalized, seen as divorced from cultural and historical change and isolated from critical reflection, as well as the problem inherent in Kantian abstract morality, which would fail to embed rational reflection on duties in a social and cultural context which could provide the individual with a motivation for action (Wood 1990, 130). Whatever dangers Hegel sees in ethical life’s dependence on habit, these are ameliorated by the rational organization of the state. If critical self-reflection is sufficiently institutionalized in the various structures of the state and civil society, the fact that individuals do not reflect on their actions and act ‘mechanically’ is not a problem.

Other commentators have argued that, while modern ethical life does indeed allow for a greater measure of reflection and critical awareness with regard to one’s norms and institutions, this does not mean that habit is thereby eliminated or overcome. Even in modern ethical life, habit continues to play an important role in our everyday behavior. We do not reflect rationally in every single moment on all our actions and aspects of our behavior; for the most part we just live according to patterns and routines. But, as Simon Lumsden and Andreja Novakovic have for example argued, habit is not necessarily in contradiction with rationality; according to Novakovic (2017, 54–58), habit has its own form of practical awareness or ‘sightedness’ which is open to critical reflection, should the need arise.

Similarly, Lumsden (2012) argues that ‘habit is not just a moment that is left behind in the struggle for more adequate expressions of human freedom, but is part of what it is to be free’ (239). But he still conceives of modern *Sittlichkeit* as a structure in which habit is, as it were, neutralized through institutionalized rational criticism. If habit risks producing social stagnation and death, “what is needed to correct the atrophied habits of culture and political life is to give them the capacity for transformation. A type of social, ethical and political organization is required that can ensure that habits and customs are constantly challenged and opposed” (240). Modernity, he writes, provides a form of social and political organization “in which the institutions of society are able to

challenge existing habits, practices and customs without this threatening the integrity of society" (241).

This is too positive both as a picture of modern society and even, I would argue, of Hegel's view of modernity. In modern society, habit is not eliminated or overcome, nor are its dangers avoided by successfully integrating it in rational, self-reflective social structures. As I will argue in the following, the two sides of habit, both its liberating and its mortifying effect, are fully maintained in modern ethical life. On this point, I agree with Christoph Menke, who writes that there is an "irresolvable ambiguity" in Hegel's concept of second nature, which "marks, to Hegel's mind, both spirit's highest peak and its deepest lapse." The self-realization of spirit through habit is at the same time its self-abasement; its inversion into (mechanical) second nature "is not an avoidable error [but] defines the finitude of spirit."¹¹ To see why this is the case, we need to analyze in more detail how the ambiguous portrayal of habit in the 'Anthropology' relates to Hegel's social and political philosophy.

3 Social Habits: the Positivity of Ethical Life

When we turn to Hegel's early writings, we can see that his concern with the mechanical, 'deadening' effect of habit as second nature has roots in his thinking on the state of the Christian religion and German politics in his own time. In the notion of 'positivity,' we find an early interpretation of the problem of second nature at the level of society.

As Hegel develops it in the early essays 'The Positivity of the Christian Religion' and 'The Spirit of Christianity and its Fate,' 'positivity' basically means subjection to authority, as opposed to free self-determination through reflection on what is right. In these essays, Hegel describes how Christianity degenerated from a community of believers whose faith was grounded in conviction and lived experience to an organized religion based on dogma and uncritical deference to authority. Positive religion, Hegel writes, is "based on authority," it is "either not posited by reason, even contrary to it, or even in accordance with reason, but yet only believed on the basis of authority" (*PCR*, 108–11, my translation). As we can see, Hegel is here still closer to Kant in claiming that inner conviction is key: even if your belief is in agreement with reason, it is still

11 Menke (2013). Novakovic explicitly rejects Menke's position (2017, 66–8), arguing that she sees "no reason to think of this lapse of habit as an inevitable evolution." She takes a fairly limited example of personal habits, however, while Menke argues on a more systematic level regarding the relation between finite and absolute spirit.

wrong if you believe it because someone else told you so. Positivity is described in terms very similar to habit: it is a “mindless and insubstantial mechanism of narrow-minded customs,” an “existence without self-consciousness,” a form of enslavement (*PCR*, 106), which Hegel ascribes to both the Jewish religion and to Catholicism.

Yet although Hegel is here concerned with the way Christianity devolved into dogma, we can already see that the notion of positivity has a broader application. According to Shlomo Avineri, we can already see in the second version of the preface to ‘The Positivity of the Christian Religion’ that Hegel conceives of the degeneration of Christianity into positivity as an “immanent process all religions are undergoing: it is part of the success of every religious creed that it becomes institutionalized and hence ‘positive’ ... What had appeared earlier as a degeneration and emasculation of the original message of Jesus becomes a law of historical development” (Avineri 1972, 28). As I have argued elsewhere, this ‘law’ holds not just for religions, but also for socio-political structures (Zantvoort 2018). The general problem is that beliefs, laws, rules and customs which are appropriate for one time and place are not necessarily so for another. Over time, institutionalized rules and creeds become entrenched, ossified, irrelevant and obsolete; even if for its founders a state or a religion had inner meaning and necessity, their descendants find it as a pre-formed body of rules and customs into which they are raised, whether it still makes sense to them or not. The problem is therefore the same as with habit: a belief or practice which is ‘automated’ by being objectified, embodied—in the case of positivity in institutions, and in the case of habit in the body itself—and thus becomes second nature becomes, because of its very objective, non-reflective character, subject to error and degeneration.

We can trace the development of this problematic in some of Hegel’s other earlier and later texts. That the problem of positivity is not only inherent in organized religion becomes clear from a look at Hegel’s more political writings, where he repeatedly laments the obsolescence of the old political order in Germany after the French Revolution and the threat of positivity inherent in a system of codified laws. We can see here that the problem of positivity is not just about the source of moral rules and motivation—whether you act on the basis of authority, on rules imposed by others, or on the basis of your own moral insight or rational reflection—but that it has to do with the dynamics of the historical development of institutions against the background of rational reflection and justification for those institutions. The problem of positivity is here transformed into one of obsolescence, of the persistence of old, outdated institutions in a time when there is no longer a rational basis supporting them.

In a fragment from 1798, 'On the Recent Domestic Affairs of Württemberg,' Hegel writes:

General and deep is the feeling that the fabric of the state in its present condition is untenable ... How blind are they who may hope that institutions, constitutions, laws which no longer correspond to human manners, needs, and opinions, from which the spirit has flown, can subsist any longer; or that forms in which intellect and feeling now take no interest are powerful enough to bind the people together! It is not only dishonourable but contrary to all sense, when things are felt to be tottering, to do nothing but wait confidently and blindly for the collapse of the old building, which is everywhere decaying and has its foundations undermined, and to submit to being crushed by the falling beams.

PW, 244, translation slightly altered

And, in a letter written in 1807, Hegel links the indolence or inertia (*Trägheit*) of the German states to the revolutionary ardor of the French, who have 'shed the fear of death along with the life of habit.' Habit is used here in a clearly negative vein in relation to the positivity of political institutions:

Thanks to the bath of her revolution, the French nation has freed herself of many institutions which the human spirit had outgrown like the shoes of a child. These institutions accordingly once oppressed her, and they now continue to oppress other nations as so many fetters devoid of spirit. What is even more, however, is that the individual as well has shed the fear of death along with the life of habit—which, with the change of scenery, is no longer self-supporting. This is what gives this nation the great power she displays against others. She weighs down upon the impassiveness and dullness of these other nations, which, finally forced to give up their indolence in order to step out into actuality, will perhaps ... surpass their teachers.

Briefe, 138; translation in *PR*, 397

Many other examples of this notion of positivity through obsolescence could be given: think, for example, of what Hegel says about the obsolescence of monasteries in the *Philosophy of Right* (§ 3), or in the 1817 essay on the 'Proceedings of the Estates Assembly in Württemberg,' where he writes that "an actual positive right a hundred years old rightly perishes if the basis constituting its existence disappears" (*PW*, 282–3). The problem is that people become habituated to their form of life, become *eingewohnt* in it, and fail to change

with the changing times and the progressive development of reason and spirit. This, too, is not merely a historical accident, but something that is inherent to the very nature of institutions and laws. In the essay on 'Natural Law' from 1802/1803, Hegel writes (*NL*, 131):

In a disintegrated nation such as the German, the laws may of course appear to have truth, provided we do not distinguish between whether they are laws of the negative and of separation, or laws of the truly positive and unity. When laws organizing a whole have meaning solely for a past, and relate to a shape and an individuality discarded long ago as a dead husk; when they are no longer interested in any but parts of the whole but confront it as a foreign power and rule ... then indeed disintegration is confirmed and stabilized.

As we can see, Hegel here still allows for the possible existence of 'truly' positive laws, which would be aimed at the general interest and the unity of the whole. But this does not mean that such laws could be established once and for all; like positive religion, law carries within itself the germ of its own fateful decline. In order to obtain objective reality, laws need to be codified, institutions need to be embedded in laws and customs, laws and customs need to be drilled into the mind of the young through education and training, the 'objective spirit' of a people needs to become its second nature, life needs to become habit.

We can see, then, that the 'death' of a society through habit, so eloquently described by Hegel in the passage from the *Philosophy of Right* mentioned above, must be linked to the tendency of laws, institutions and customs to entrench themselves and resist change. This 'positivity' is inherent in laws and institutions as such: only by becoming something external to the subject, that is, by becoming second nature, can they gain objective reality and function at all. To a greater extent than in the early texts mentioned, in the *Philosophy of Right* Hegel stresses this double aspect of institutions and customs. As he writes, it is only through habit, through second nature, that spirit first begins to exist as spirit (*PR*, § 151). Habits and customs provide a shared background of social expectations that allows people to adapt to each other, to communicate and live together. Habit "introduces ... a *general* manner of acting which may also be transmitted to others, a rule" (*EPS*, § 410 Z). Through establishing a general level of conformity to social rules, customs ensure smooth social interaction: as Hegel says, in civil society, "everything particular takes on a social character, in the manner of dress and times of meals, there are certain conventions which one must accept, for in such matters, it is not worth the trouble to seek to display one's own insight, and it is wisest to act as others do" (*PR*, §

192 Z). And finally, just as the body is built up out of bodily functions become habitual to allow higher functions to emerge, society is built up out of institutions that have become second nature, thus receding into the background and generally hidden from criticism or concern, allowing its members to attend to their day-to-day affairs:

People trust that the state will continue to exist and that particular interests can be fulfilled within it alone; but habit blinds us to the basis of our entire existence. It does not occur to someone who walks the streets in safety at night that this might be otherwise, for this habit of [living in] safety has become second nature, and we scarcely stop to think that it is solely the effect of particular institutions.

PR, § 268 Z

Customs and institutionalized behaviors are social habits: they integrate erratic individuals into a smoothly functioning society, just as habit integrates the various bodily functions into an effective whole. But therein also lies their danger. We become blind to the institutional structure on which our lives are built; rules are applied without consideration to their effectiveness or particular circumstances; individuality is sacrificed to social conformity. This is death through social habit: individuals become reconciled to the social order, they become 'mentally and physically blunted'; as in the case of habit in individuals, all resistance must be worn down to ensure the smooth functioning of the social whole.

The social and political consequence of this process of habituation lies in the inertia of institutions, which, like the individuals which sustain them and are sustained by them, become entrenched, ossified, and thereby undermine their own effectiveness. States, too, die of habit. This is a form of spiritual decay, a tendency, Hegel suggests, for the 'spirit' to evaporate from the community, leaving nothing but lifeless bones, a 'dead husk.' Social relations become ossified, the communal spirit is lost and individuals focus only on their private concerns, they become little more than cogs in a machine, they no longer recognize themselves in public institutions and fail to support them, leading to the weakening and ultimately destruction of the state. This is Hegel's diagnosis of what happened to the Greek and Roman forms of ethical life, and to pre-revolutionary Germany. In *The Positivity of the Christian Religion*, he describes how in Imperial Rome

the picture of the state as a product of his own energies disappeared from the citizen's soul ... each individual had his own allotted place, a place

more or less restricted and different from his neighbour's. The administration of the state machine was entrusted to a small number of citizens, and these served only as single cogs deriving their worth solely from their connection with others ... All activity and every purpose now had a bearing on something individual; activity was no longer for the sake of the whole or an ideal.

ETW, 156–7

And in the *Phenomenology* he describes how society in Ancient Rome 'organized itself into systems of personal independence and property' and 'articulated' itself into 'self-isolating systems.' To escape from this tendency to isolation and ossification, the social spirit had to be regenerated by regular bouts of warfare:

The Spirit of universal assembly is the simple and negative essence of these self-isolating systems. In order not to let them become rooted and fixed in this isolation, which would let the whole fall apart and the spirit evaporate, the government must from time to time shake up [these systems] internally by means of war, thereby upsetting their comfortable order and right to independence, and throwing them into confusion.

PS, 272

It is true that Hegel associates these defects with the particular ills of Rome and the Holy Roman Empire at the time of the French Revolution. In the *Philosophy of Right*, he no longer sees the state as a mere 'machine': in the modern state, self-interest becomes the organizing principle of civil society, leading to various problems including systemic poverty (*PR*, §§ 243–245) and recurring bouts of economic instability (*PR*, § 236); but these are mitigated to some extent by the regulatory structures of the state. But this does not mean that the modern state is secure from the dangers of death by habit. In the *Philosophy of Right*, too, Hegel sees a risk of the spirit of the community 'evaporating,' leading to the social body's ossification and death. Reflecting on the limits of the modern state and international relations, he famously prescribes war as an antidote to the tendency of society to become ossified and only focused on self-interest (*PR*, § 324). The addition puts it in words very similar to the passage from the *Phenomenology* mentioned above:

In peace, the bounds of civil life are extended, all its spheres become firmly established, and in the long run, people become stuck in their ways. Their particular characteristics [*Partikularitäten*] become increasingly

rigid and ossified. But the unity of the body is essential to the health, and if its parts grow internally hard, the result is death.

PR, § 324 Z

And in the introduction to the *Lectures on the Philosophy of World History*, Hegel writes:

The natural death of the national spirit may take the form of political stagnation, or what we call habit. The clock is wound up and runs on automatically. Habit is an activity with nothing to oppose it; it retains only the formal property of temporal continuity, and the depth and richness of its ends need no longer be expressed. It is, so to speak, a superficial and sensuous kind of existence whose profounder significance has been forgotten. Thus both individuals and nations die a natural death. And even if the latter live on, their existence is devoid of life and interest, because the needs which have created them have been satisfied, and nothing remains but political stagnation and boredom.

LPH, 59

Hegel's analysis of institutions and social habit in modern *Sittlichkeit*, though expressed in various places in the *Philosophy of Right* and partly in the additions, is consistent with the analysis of habit in the 'Anthropology' and other writings. Though Hegel also describes countervailing tendencies in modern societies which can help cope with entrenched institutions and the stultifying effects of habit and social routines, such as the corporations, the universal estate of the bureaucracy and regular bouts of war to shake up the social structure, these all have their own problems and do not necessarily provide a conclusive solution. The problem with relying on reflection and criticism (either by individuals or embedded in institutions) to correct the dangers of habit and second nature, as Lumsden and Novakovic suggest doing, is that these faculties also rely on habits and institutions and are thus subject to their own forms of alienation and inertia. Hegel offers some suggestions along these lines, though these cannot be reconstructed in detail here. If, instead, we turn to the present day, we can see that Hegel's analysis of habit and second nature is highly relevant for our situation.

For who could look at the world today and claim that the problem of positivity or of 'bad habit,' of the irrational, unthinking, mechanistic, enslaving aspect of habit has been overcome? It would be difficult to maintain that today's political institutions are adequate for dealing with the pressing problems societies face today—climate change, the power of transnational corporations,

and the unforeseen effects of new technologies, to name but a few. Similarly, we would hardly say that ‘routine behaviour’—people merely following and conforming to the routines imposed on them by institutions and pre-existing patterns of behaviour—has been eliminated and replaced by fully transparent reflection and self-determination on the part of individuals. As Hegel well saw, in modern life part of the demand for rationality shifts away from the individual to the level of the institutions through which individuals live their lives. Precisely by living in a form of ethical life that is itself a reflection of well-justified norms and rational aims and procedures, individuals are spared from having to constantly reflect and are able to feel at home in their world. But this shift of rationality and reflection to the systemic level is also part of the problem. In individuals, bad habits can be corrected through education, self-improvement or therapy. But bad institutional habits are much harder to change, and the more complex and integrated these institutions are, the greater the danger that they become entrenched, inert and unresponsive to demands for change, even if there are good reasons for change (Zantvoort 2017).

Much of this has to do with developments that had not become fully apparent in Hegel’s day, such as globalization and technological development, although Hegel had a good inkling of the problems that remained in his own description of modern society and its institutions. One of the reasons why modern institutions are more prone to ‘positivity’ is because modern society is more complex and its institutions are more autonomous and differentiated. Hegel describes forms of ethical life as self-maintaining systems, which eventually collapse because of a disturbance from the outside after they have been internally weakened by habit, inertia and the decay of the communal spirit—as the Greek world was destroyed by the Romans, because it was already weakened by its own internal contradictions. But the modern form of ethical life has spread across the globe—it faces no credible alternative from the outside. And internally, its institutions have become so effective at maintaining themselves and we have become so habituated to them, that the system seems to be able to perpetuate itself even if it is slowly drifting to its own destruction.

As I mentioned at the beginning, a look at popular self-help and psychological literature shows how thoroughly modern culture has accepted the idea that we are creatures of habit, who can only ‘improve’ themselves by imprinting themselves with more effective habits. Governments have also enthusiastically embraced this idea, for example in the practice of ‘nudging’: designing policy not to address citizens as capable of responding to reasons, but as behaviorist machines to be guided to the desired course of action through subliminal cues.

From this perspective, we have already given up on the Enlightenment ideal of self-reflective rationality, which Hegel sought to save by embedding it in habit

and making it our second nature. Is there anything left for us, then, but “a superficial and sensuous kind of existence, whose profound significance has been forgotten,” where “nothing remains but political stagnation and boredom”?

Abbreviations

Briefe Hegel, Georg Wilhelm Friedrich. 1969. *Briefe von und an Hegel*, vol. 1. Hamburg: Felix Meiner Verlag.

- EPG* Hegel, Georg Wilhelm Friedrich. 1986. Enzyklopädie der philosophischen Wissenschaften im Grundrisse 1830. 3. Teil, Philosophie des Geistes. *Werke*, vol. 10. Frankfurt a.M.: Suhrkamp.
- EPS* Hegel, Georg Wilhelm Friedrich. 1979. *Hegel's Philosophy of Subjective Spirit*. Translated by Michael John Petry. Vol. 2, 'Anthropology'. Dordrecht: D. Reidel.
- ETW* Hegel, Georg Wilhelm Friedrich. 1948. *Early Theological Writings*. Translated by Thomas Malcom Knox. New York: Harper & Brothers.
- LPH* Hegel, Georg Wilhelm Friedrich. 1975. *Lectures on the Philosophy of World History*. Translated by Hugh Barr Nisbet. Cambridge: Cambridge University Press.
- NE* Aristotle. 2004. *Nicomachean Ethics*. Translated and edited by Roger Crisp. Cambridge: Cambridge University Press.
- NL* Hegel, Georg Wilhelm Friedrich. 1975. *The Scientific Ways of Treating Natural Law*. Translated by Thomas Malcom Knox. Philadelphia: University of Pennsylvania Press. 1971.
- PCR* Hegel, Georg Wilhelm Friedrich. 1971. "Die Positivität der christlichen Religion." In *Werke*, Bd. 1. Frankfurt a.M.: Suhrkamp.
- PR* Hegel, Georg Wilhelm Friedrich. 1991. *Elements of the Philosophy of Right*. Translated by Hugh Barr Nisbet. Cambridge: Cambridge University Press.
- PS* Hegel, Georg Wilhelm Friedrich. 1977. *Phenomenology of Spirit*. Translated by Arthur Vincent Miller. Oxford: Oxford University Press.
- PW* Hegel, Georg Wilhelm Friedrich. 1964. *Political Writings*. Translated by Thomas Malcom Knox. Oxford: Clarendon Press.
- SL* Hegel, Georg Wilhelm Friedrich. 1969. *The Science of Logic*. Translated by Arthur Vincent Miller. New York: Humanity Books.

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The Concept of Judgment on the Legal Stage: an Alternative View of Hegel's Theory of Freedom

Benno Zabel

1 From Political to Legal Judgment

In modern legal philosophy, the concept of judgment occupies a clearly marginal position.¹ When one speaks of judgment, of practices of judging and deciding, one generally has in mind questions of aesthetics and political theory.² And yet the concept is of central importance also for the legitimation of law and the related culture of justice; it is therefore striking that there does not exist a more intensive critical examination of its legal dimension.³ The perspective of political theory may help us understand this legal dimension, for law and politics are not opposing spheres, but instead reciprocally related, mutually complementing and constitutional conditions of the lifeworld.⁴ Against this background one will see that Hegel has at his disposal a very nuanced and still highly applicable legal concept.

But let us first turn to the *political grammar* of judgment. At issue is a competence in orienting oneself and making decisions that applies, according to Hannah Arendt, to the entire social field, to society with all its existing and constantly changing agreements. Practices of judging and deciding ought to enable a normative openness, lend a dynamic and reliable dimension to human coexistence:

In our general usage the word “judgment” has two meanings that certainly ought to be differentiated but that always get confused whenever we speak. First of all, judgment means organizing and subsuming the

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- 1 Exceptions include Christoph Menke (2015) and Christoph Möllers (2015). Interdisciplinary discussion can be found in Gertrud Koch et al. (2015) and in the collected volume edited by Cornelia Vismann and Thomas Weitin (2006).
 - 2 See Christoph Menke (2013) and Andrea Marlen Esser (2017).
 - 3 On the special significance of the competencies of judgment of judges (also in contrast to forms of legal interpretation etc.), see Ronald Dworkin (1977).
 - 4 Cf. Jürgen Habermas (1992), Axel Honneth (2011), John Rawls (1971) and Benno Zabel (2019a).

individual and particular under the general and universal, thereby making an orderly assessment by applying standards by which the concrete is identified, and according to which decisions are then made ... Judgment can, however, mean something totally different, and indeed it always does when we are confronted with something which we have never seen before and for which there are no standards at our disposal. This judgment that knows no standards can appeal to nothing but the evidence of what is being judged, and its sole prerequisite is the faculty of judgment, which has far more to do with man's ability to make distinctions than with his ability to organize and subsume.

ARENDT 2005, 102

Drawing on Kant's distinction in the *Critique of Judgment*, Arendt highlights two distinct political forms of judgment: one conserves and orders while the other creates and shapes. Kant had famously linked a special epistemic capacity with aesthetic judgment, which he formulates as follows:

Judgment in general is the ability to think the particular as contained under the universal. If the universal (the rule, principle, law) is given, then judgment, which subsumes the particular under it, is *determinative* ... But if only the particular is given and judgment has to find the universal for it, then this power is merely *reflective*.

KU, 19

Along with Kant, Arendt is convinced that free judgment can bring about rational, just action also in societies that cannot appeal to a closed or transcendently secured world picture—in societies whose guiding distinctions, which had previously served as the standard for thought and action, have changed or temporally failed. Also in these cases it is reasonable, according to Arendt, for people to make a judgment about what the basic rules of social life ought to be. This even applies when, as in Kafka's world, "normality has evidently become an exception" (Arendt 1976, 75). In order to brace herself against a self-complacent nihilism, a devaluation of all values, Arendt adopts a posture she calls "thinking without a banister" (Arendt 2018). In order to give this kind of thinking and acting a form structured by rules, Arendt relies on what Kant had designated as the *sensus communis* in order to mobilize a capacity for judgment:

i.e., a power to judge that in reflecting takes account (a priori), in our thought, of everyone else's way of presenting [something], in order *as it*

were to compare our own judgment with human reason in general ... Now we do this as follows: we compare our judgment not so much with the actual as rather with the merely possible judgments of others, and [thus] put ourselves in the position of everyone else, merely by abstracting from the limitations that [may] happen to attach to our own judging.

KU, 160

This account of the *sensus communis* is by no means identical with “common sense,” however the latter is understood. The *sensus communis* does not amount to attributing the status of reflected universal judgment to generally accepted opinions. In fact, to a certain degree it is precisely the opposite: the *sensus communis* is a kind of social faculty of imagination, a special sense that “fits us into a community ... because communication, i.e., speech depends on it” (Arendt 1992, 70).⁵ By reconstructing judgment in this way as a capacity to shape politics, Arendt highlights the self-reflectivity of modern communities, which are well aware that freedom is not merely something given and self-evident, but something that must equally be re-thought, fought for and advanced time and again.

Neither Kant nor Arendt associated the idea of judgment explicitly with the dimension of right or law (which does not exclude legal references). This may be due to their respective epistemological interests.⁶ Yet one cannot overlook the fact that legal action and judgment are particularly significant for social coexistence, and that this applies all the more in societies where right assumes a principal function. Focusing on the legal dimension may bring attention to the close links and dynamics that exist between the political and legal spheres. One may also see that there is, connected to the idea of judgment, a normative project that rightfully acquires its own reality and concrete form in a *universally*

5 For the sake of comparison, consider Kant’s formulation from the *Critique of Judgment*: “But we are talking here not about the power of cognition, but about the *way of thinking* [that involves] putting this power to a purposive use; and this, no matter how slight may be the range and the degree of a person’s natural endowments, still indicates a man with a *broadened way of thinking* if he overrides the private subjective conditions of his judgment, into which so many others are locked, as it were, and reflects on his own judgment from a *universal standpoint* (which he can determine only by transferring himself to the standpoint of others)” (*KU*, 161).

6 Thus in Kant’s *Metaphysical Elements of Justice* one does not find in-depth reflections, and elsewhere he speaks out, however, on the question concerning the professionalization of legal judgment as he deems it necessary for the teacher of law or the judge. On this point, see Wolfgang Wieland (1998). For Arendt, in turn, political theory and political judgment stand in close relation to the justification of a right to rights.

binding frame of interpretation. It is Hegel's merit to have spelled out this multiperspectivity of judgment in a model of right and the administration of justice.

It will be shown in what follows that Hegel's speculative thought captures the legal dimension in a *network of forms of judgment*. In focus will be individual (personal) action, the institutional structure (law, procedures) and the consciousness of right that is thereby brought to bear. Hegel certainly dealt with the tensions that (positive) right itself produces and to which it is exposed, but he believed they could be brought under control in an ordered political system. Time and again, this dialectic of freedom has come under attack.⁷ Certainly the question arises for the present age whether judgment in reference to right must be rethought if one wants to do justice to the fragility of civil societies. We will turn to this question in conclusion.

2 Revenge, Law and the Consciousness of Right

2.1 *The Logic of the Forms of Judgment and Free Will*

Let us begin with some remarks on method. Hegel's philosophy of the modern world is easier to understand when the network of the forms of judgment are related back to its logical roots (to what Hegel calls the *Science of Logic*). In this respect it is possible to speak of a logic of the forms of judgment. Talk of logic specifies the speculative program on which also the justification of right is based.⁸ Hegel's starting point is that the development and the claim of reason are articulated in reality, that reason itself is not distinct from reality. He argues that we are to grasp this *universe of reality* by means of an internal process of self-differentiation of the spiritual substance (as subjectivity), by reflecting on recognized principles, on the forms and ideas of successful human coexistence. Hegel distinguishes between three basic types of reflection, between the doctrine of being, the doctrine of essence and the doctrine of the notion (cf. Stekeler-Weithofer 2008). The aim of this perspectival analysis is the reconstruction and, as far as necessary, critique of our cultural tradition, of claims of knowledge and truth, of our rehearsed praxis forms. In reference to the relevant part of the philosophy of right, this analysis concerns free will as the basic principle of the objective spirit. Hegel sketches the project in his speculative language in § 4 of the *Philosophy of Right*:

7 See, for example, Herbert Schnädelbach (2000, 172 ff.), Ludwig Siep (2010, 197 ff.) and Ernst Tugendhat (1993, 305 ff.).

8 On this point, see Robert Brandom (2015, 225 ff.), Jean-Francois Kervégan, (2007), Robert Pippin (2016, 163 ff.) and Michael Quante (2011, 168 ff.).

The basis [*Boden*] of right is the *realm of spirit* in general and its precise location and point of departure is the *will*; the will is *free*, so that freedom constitutes its substance and destiny [*Bestimmung*] and the system of right is the realm of actualized freedom, the world of spirit produced from within itself as a second nature.

PR, 35

Hegel's definition of will and freedom deviates considerably from the philosophical tradition. If one deciphers the speculative semantics, one uncovers important conceptual insights. It is important to note that talk of (free) will is misunderstood from the outset if one, as is commonplace today, identifies it with an atomistic conception of capacities. According to Hegel's understanding of its basic structure, the will articulates the *practical-performative side of rational self-determination*. Will and freedom are not linked merely analytically; rather, the will realizes the entire realm of freedom and represents an imminent criterion for assessing actions, norms and claims (cf. Quante 2011, 25). Thus, two standpoints are joined methodologically: the standpoint of the individual (of the subject, the person) and the standpoint of the social world, of institutions, of society, of right. It is to be shown with regard to the individual standpoint that freedom (of choice) requires a consciousness, i.e. a self-reference. Consciousness of freedom places the individual before a multitude of possible decisions. According to Hegel, in the concrete decision the particular individual steps into the world. The two perspectives stand in a relation of ontological dependence that must be conceptually mediated. This means that the autonomy of the individual is realized whenever moral, legal and political decisions are made in the awareness of one's freedom of choice and in consideration of universally recognized beliefs (*PR*, §§ 5–7).⁹ The reference to universally recognized beliefs already makes clear, however, that in his semantics of the will Hegel also wants to consider the other standpoint, the social or ethical standpoint—more precisely, that he wants to draw attention to the sense in which the social world is constitutive of freedom. According to Hegel's formulation, the institutional network as second nature is a form of rational self-determination; institutions are thus always part of a reflective process that is justified historically and collectively (Khurana 2015, 389 ff.). (We will come back to this.) Precisely for this reason, single individuals or groups can certainly shape and modify institutions. Hegel objects, however, to the

⁹ For an elucidation, see Klaus Vieweg (2012, 57 ff.).

idea of attributing legitimation and the infrastructure of free communities solely to individual (rational) decisions.¹⁰

It is this self-determination of the free will and the way it *constitutes itself* that helps us to situate Hegel's interpretation of legal judgment. This understanding of the will manifests the productive connection between (logical) judgment and the capacity for judgment: The logic of judgment demands that we strive for the *correct employments of concepts*; otherwise there is no way for us to understand our action at all. It is not the classifications or definitions (i.e. the judgments of existence) but rather the inferential assessment of normal sequences, the relevance of forces, causes and dispositions that enable reliable knowledge about our social practice. For this purpose one must distinguish between the performative-subjective (or individual) and the practical-universal perspective. The achievement of the power of judgment consists, then, precisely in combining both perspectives while referring to the *idea of the good*. In contrast to Kant, this activity of judgment aims not merely at the form, since for Hegel human action and judgment are always linked to a tradition and dependent on a specific cultural path (*GW* 12, 53–89). Yet one must question to what extent the power of judgment is linked to the idea of the good and in which way the network of forms of judgment represents the legal culture of free communities.

2.2 *Revenge, Consciousness of Right, and Law*

The starting point for the following reflections is what we may call the *internal differentiation* of free communities.¹¹ It is well known that the way Hegel interpreted this internal differentiation differs from the way it is interpreted in models of democracy today. We are not going to pursue here the controversial debate that continues to this day about Hegel's alleged or actual conservatism, including his hostility towards democracy. (It has at any rate proven to not be particularly useful.)¹² There is more to be gained by turning instead to how Hegel, within the framework of this internal differentiation, arranges legal relations and commits them to a constitutional form. If we bear in mind the

10 Consider § 144 in Hegel's *Philosophy of Right*: "(a) The objective sphere of ethics, which takes the place of the abstract good, is substance made *concrete* by subjectivity as *infinite form*. It therefore posits *distinctions* within itself which are thus determined by the concept. These distinctions give the ethical a fixed *content* which is necessary for itself, and whose existence [*Bestehen*] is exalted above subjective opinions and preferences: they are *laws and institutions which have being in and for themselves*" (*PR*, 189).

11 On the internal differentiation of modern communities, see Jürgen Habermas (1992, 166 ff.) and Christoph Möllers (2008).

12 For a clarification, see Jean-Francois Kervégan (2008).

speculative semantics of the will, we will see the plan Hegel is pursuing with his internal differentiation of right, as he articulates it in the *Encyclopaedia*:

[W]e begin with something *abstract*, namely with the *concept of the will*; we then proceed to the ensuing actualization of the still *abstract* will in an *external* reality, to the sphere of *formal right*; from there we go on to the will *reflected into itself* out of external reality, to the realm of *morality*, and thirdly and lastly we come to the will that *unites* within itself *these two abstract* moments and is therefore *concrete*, ethical will.

EN, § 408, 121

The internal differentiation of right is thus not conceived as a kind of self-referential order of norms in the sense, for instance, that Kelsen (1934) advocated. Abstract right, morality and ethical life designate *organizational forms based on the will*, namely, of the person, the subject, the civil society and of state law. They are standpoints or spheres of an order from which normative standards (rights, obligations) are asserted. Hegel by no means objects to posited norms and legislation in general. He insists instead that normative and in particular legal standards cannot be conceived solely from the subjective or the objective side, for they represent different levels of the realization of freedom that are to be mediated in a free community. Their effect consists not in being merely passively endured but instead in being actively unfolded through the performative action of the legal subjects.

While we spoke at the outset of the legal power of judgment, of a network of forms of judgment, now we are in a position to further specify what this means. Judgment with regard to right is by no means simply imposed upon legal subjects, but rather realized in the social structures of a community, in the institutions, laws, procedures etc. (This distinguishes it at least to a certain degree from Arendt's political judgment.) Yet judgment also acts reflexively, practically and dialectically. It enters the stage through the actions of the (professional, legal) actors, coming into conflicts and having to demonstrate its claim to justice, i.e. the claim to justice of right, again and again.

In light of the example of revenge we can highlight the logic, the perspectival nature and the immanent limits of legal judgment. Revenge has fascinated and divided societies throughout history. It stands, it is said time and again, for the subtle connection between right and authority,¹³ for the indissoluble

13 See Christoph Menke (2011); for a general analysis of the relation between right and authority, see Walter Benjamin (1999) and Jacques Derrida (1994).

aporias of law (which we are reminded of especially by the tragedies). It also stands, however, for a judgment that divides the world into what is to be affirmed and what is to be negated, a judgment that announces, as Nietzsche formulates it, the fiction of an “anticipated future bliss” (Nietzsche 1989, 48). Hegel approaches revenge in a *legal-analytical* manner.¹⁴ Revenge is accordingly a response to a suffered injustice. The concept of injustice permits gradations according to the kind and quality of the infringement. At the end of the scale is the crime as a negative, infinite judgment. According to Hegel, “Someone who commits a crime ... does not merely deny the particular right of someone else to this particular thing (as in a suit about civil rights); instead, he denies the rights of that person completely ... i.e., right in general” (*EH*, § 173, 251).¹⁵ We do not need to discuss here the details of the concept (Zabel 2019b). The reference to injustice and specifically to crime indicate that revenge entails a *free legal judgment* being opposed to the judgment of injustice. For this reason, for Hegel revenge is not merely justified; insofar as it is oriented to retribution, it is even *just*. He nonetheless immediately qualifies this determination, for revenge is and remains essentially “the action of a *subjective* will ... whose justice is ... altogether contingent” (*PR*, § 102, 130). The free legal judgment of revenge is an arbitrary act, precisely because achieving the intended justice depends on chance, which Hegel believes is due above all to two structural moments: the entanglement of affect (feeling, emotion) with the decision in revenge, on the one hand, and the deficient form of the legal judgment, on the other. Revenge thus reveals that the single individual makes a free decision, which cannot break free from the *immediacy* of the passion; this initiates, in turn, as for Kohlhaas, an incompletable project. As an incompletable project, revenge sets in motion an infinite compulsion of repetition and new violations. Like Nietzsche, Hegel recognizes in this the signature of the fiction of future, though he interprets it differently: the self-referentiality of the affect that is communicated in the form of the legal judgment devalues in turn the normative idea of a just settlement and, “because of this contradiction, it becomes part of an infinite progression and is inherited indefinitely from generation to generation” (*PR*, § 102, 130). Revenge is affective, i.e. impossible justice. This is not Hegel’s verdict over revenge, but instead the result of his analysis of judgment, whereby the form (compulsion of repeated violation) exposes the aim (justice), or at least *can* expose it. If it is to realize justice, judgment must therefore assume a different form.

14 On Hegel’s understanding of revenge, see Frank Ruda (2015).

15 See also § 499.

Hegel's answer to the revenge dilemma is, as we know, *punishment as a form of retaliation free of affect*. Overcoming the conflict is thus shifted from the future fiction to the perspective of present reason. Punishment claims authority of interpretation of the past. Realized freedom is only possible when the claim of validity of the committed injustice is weakened, and the criminal's contradictory judgment is turned on him or herself (strikes back). Punishment thus marks not only the contradiction between the content and the form of the revenge, but also calls for this contradiction to be dissolved and overcome in the penal sentence (cf. Ruda 2015, 102 f.). But that is not all. It is often overlooked that Hegel explicitly signs over the solution of legal conflicts to an institutional form, namely, to the *administration of justice*. The administration of justice becomes the form of the form; with it the conflict of abstract right is socialized. We will come back to this at a later point in the argument.¹⁶

This new rendition of conflict resolution, and the inclusion of an institutional formal setting, themselves have preconditions, without which it is not possible to grasp Hegel's theory of freedom: at stake is the general knowledge or consciousness of right and law. Consciousness of right and law are an expression of the Hegelian architecture of the will and consequently of the internal differentiation of right. Both concepts are seen, also today, as structural moments of a community ordered under the rule of law. Yet often Hegel is confronted with a non-metaphysical or post-metaphysical understanding of right and the modern state. Consciousness of right and law are accordingly at the center of liberal thought about values and norms. To be sure, modern thought about values and norms has itself emerged in response to scientific interpretations of the social world. This thought connects the democratic idea of individual participation with the principles of a republican restriction of power.¹⁷ If one takes up Hegel's theoretical standpoint, however, the liberal project appears to hang in midair, as it were. One would have to ask where these values and norms come from, and how they generate any bindingness at all for the individual or society and on what basis they can rightfully claim universal (enforceable) validity.¹⁸ During his time, in which the liberal and democratic project was still in its infancy, Hegel did not campaign against scenarios

¹⁶ See fn. 3.

¹⁷ Philip Pettit (2015, 155 ff.) and Quentin Skinner (2002, 186 ff.); on the liberal concept of freedom, see Benjamin Constant's lecture "The Liberty of the Ancients compared with that of the Moderns" and Isaiah Berlin (1969).

¹⁸ On the genesis of semantics of values, see Herbert Schnädelbach (1983, 198 ff.); on the current debate, see John McDowell (2001).

of limitation to participation or power, nor against values (insofar as they interested him) and norms (cf. Buck-Morss 2011).

Hegel has a different idea of legitimation to justify freedom. Precisely for right and the culture of conflict resolution it holds that they unfold their effect only in a process of practically performative and social self-reflectivity. In this sense one is to understand also the formulation in § 210 of the *Philosophy of Right*: “The objective actuality of right consists partly in its being present to the consciousness and in being some way *known*, and partly in its possessing the power of actuality, in having *validity* and hence also in becoming *known as universally valid*” (240). If talk of the actuality of right as a form of self-consciousness, of universal knowledge of right, refers at the same time to a practical performative and social self-reflectivity, then we are dealing with—fully in line with the concept of the will sketched above—the discursive and tiered framework of a *judgment community*. Hegel’s classical concept for this is “ethical life” (*Sittlichkeit*). Without discussing the details of this concept, let alone the controversies,¹⁹ we can nonetheless take note: in the context of ethical life, Hegel brings together diverse practices and forms of judgment. This applies to the justification of the smallest social elements as communities of love, solidarity and education, the infrastructure of the market economy and the administration of justice, institutions of social welfare and public administration in civil society, and it applies to the organization of the political constitution of a free community. In this respect, the subjects of a community or society—the citizens with their propositional attitudes—are related to what Hegel calls the actual self-consciousness (cf. Rödl 2019), what we may also call the basic conditions of human coexistence (albeit in very different ways). For the area of right and the subjects of right, this insight becomes concrete in the recognition of the external existence of freedom and consequently in dealing with the laws. Hegel summarizes it in § 211 of the *Philosophy of Right* as follows:

When what is right in itself is posited in its objective existence [*Das-ein*]—i.e. determined by thought for consciousness and *known* [*bekannt*] as what is right and valid—it becomes *law*; and through this determination, right becomes *positive* right in general ... Only when it becomes law does what is right take on both the *form* of its universality and its true determinacy.

PR, 241

19 To mention merely two: Axel Honneth (2001) and Robert Pippin (2008).

Subjects encounter right in the form of positive right as something made by the lawmaker; at the same time, it is the expression of the collective knowledge of freedom. (Hegel limits this rational determination of law, however, with a view to the way every order of positive right is tied to time: contingencies and peculiarities could result in law differing with regard to its content from what right is as such.)²⁰ Laws are not merely limitations of authority; they are at the same time *communication media* that serve for orientation. Laws ought to have a claim to universality, i.e. generalizability. In this sense they themselves become representatives of a judgment community related to external existence. It was clear already to Hegel that the legitimacy of every model of a constitutional state is based precisely on a universal law being inscribed in state authority, in the constitutional monopoly on the use of force. In this constellation, authority and law articulate the binding *framework* of freedom, a framework that we have in mind today when we speak of democratic rule. Legislative organs realize freedom *through* rule, for laws are passed in order to define the scope of individual rights and obligations (Möllers 2008). By contrast, we can speak of freedom *before* rule where, in a special procedure, the administration of justice enforces the rights of the individual against state authority or also against other private actors. Freedom and rule are to be mediated here in an open relationship and by means of a professional legal judgment. While the concern of freedom *of all* citizens is at issue in legislation, in judicial action we are dealing with the legitimate concern of freedom of the individual in a particular case. Hegel has precisely this in view in the following passage:

When right has come into existence [*Dasein*] in the form of law, it has being for itself; as opposed to *particular volitions and opinions* with regard to right, it is self-sufficient and has to assert itself as *universal*. This *cognition* and *actualization* of right in the particular case, without the subjective feeling [*Empfindung*] of *particular* interest, is the responsibility of a public authority [*Macht*], namely the *court of law*.

PR, § 219, 251–252

Here at the latest we can see how the consciousness of right and universal law relate to each other and to what extent they are conditions of an administration of justice organized by the state. For Hegel the administration of justice is conceivable as a form of freedom only when the judgment of the

²⁰ See PR, § 212.

court incorporates the insights of a reflective judgment community grounded in laws, i.e. of the language game of *righteous* and *educated* subjects (Cobben 2008).

3 On the Dramaturgy of Procedure and Judgment

3.1 *Judgment and State Authority*

Following what has been said above, let us attempt a final specification of the concept of judgment: with regard to right, judgment is the capacity to decide freely, which can be appropriately rehearsed and exercised as individual rational judgment only in the context of a general consciousness of right and the institutional and inferential form of right. It should be emphasized once more that we are not seeking to devalue the individual judgment as such; instead we are, or at least Hegel is, seeking to embed particular knowledge in the infrastructure of a legal order that cannot be reduced to merely individual decisions. Whether this is the only form in which right and conflict resolution in free communities is conceivable in the present age will be taken up in the fourth and concluding section.

For Hegel, the administration of justice, the courts and not least the professional juristic actors, acts on the basis of an ethical concept of freedom, albeit in the coordinate system of civil society.²¹ This is somewhat unusual in the context of modern democracies where the administration of justice is located as an *independent* authority in the framework of the constitutional system (Möllers 2008, 90 ff.). At issue here is not Hegel's frequently criticized model of the arrangement of powers (which, as is well known, differs from Kant's).²² If we were to take the standards of today's democratic constitutions as a basis, then the judiciary would have to emerge as an independent institution of inner state law. Hegel chooses a different path and assigns a dual role to the judiciary: it is an independent institution of civil society and a dependent part of government authority.²³ In this respect, he has a broad semantics of

21 Hegel brings into focus the structure of judicial administration of law in §§ 219–229 of the *Philosophy of Right*.

22 Immanuel Kant (1991, § 45, 313).

23 "This task of *subsumption* in general belongs to the *executive power*, which also includes the powers of the *judiciary* and the *police*; these have more immediate reference to the particular affairs of civil society, and they assert the universal interest within these [particular] ends" (PR, § 287, 328–329). On this debate and for a concise assessment, see Ludwig Siep (1992).

government that includes not only the executive organ and the activity of administration familiar to us today, but also decisions in applying the law. Government means the implementation and concrete application of the political and constitutional will.²⁴ With this dual role of the judiciary as functionally oriented to civil society and structurally assigned to government authority, Hegel highlights two points. Firstly, the administration of justice confines the centrifugal, freedom-negating forces unleashed by the market and particular (atomized) interests of the citizens. In this respect, the judiciary constitutes a *counter force*. Secondly, he highlights that this counter force becomes actual and effective by referring back to the ethical resources of civil society and administrative reason. This necessary mediation from the dual role is to be achieved through the judgment of the judge as person.

3.2 *The Dramaturgy of the Procedure*

Let us take note that the administration of justice and case law are institutions of the constitutional state; as counter forces in the context of the atomized civil society, they integrate normative elements while defending the promise of freedom of the constitution. To illustrate how Hegel reconstructs the practices of court judgment, it is sensible to distinguish between the dramaturgy of the judicial procedure, i.e. the external form, on the one hand, and the substantiation of decisions in reference to particular cases, i.e. the inner logic of judicial judgment, on the other. If we consider the dramaturgy of the procedure, then we can see that Hegel is theoretically processing the liberalization of right, as it begins to establish itself in the nineteenth century (based on what are to this day the central principles of the democratic legal system).²⁵ However, the point of departure is (again) the *positioning* of the juridical power of judgment in the courts: "Right and laws have their peculiar reality in that only they, without subjective interest and passion, are the purpose—in view of the recognition of the particular case of the application of laws and the execution of a general judgment towards the one addressed" (Homeyer 1973, § 109, 305, transl. AS).²⁶ This "peculiar reality" of right and law is possible only through the recognition of a *procedural form guided by judgment*. This procedural form guided by judgment marks external, indispensable conditions of guarantee. This includes, in addition to the impartiality of the judicial procedural orientation, also the

24 An account of the underlying logical structure can be found in Vieweg (2012, 407 ff.).

25 On this development, see Benno Zabel (2017).

26 A similar view is articulated by Eduard Gans in his lectures on the Hegelian philosophy of right: the court is an authority that places law in life; it is the existence of the law (2006, 177).

orality, publicness and verifiability of the application of laws (*PR*, § 224). Here we see how the insight mentioned above—that laws are to define a framework for freedom not merely by moderating freedom through rule but equally by protecting freedom from encroaching state authority—is translated by Hegel into procedural form. Each legal procedure has to appropriately balance social interests and individual interests of those involved. (Hegel's insistence on the conditions of guarantee, on the phenomena of rule and potential procedural authority may also be a reflection of the temporal proximity to the unfettered inquisition process of the *Ancien Régime*.) Also belonging to the conditions of guarantee is ultimately the concrete social participation in procedures, which Hegel would like to guarantee by means of jury trial.²⁷

One should also not underestimate the importance of Hegel's suggestion that right is *bound to proof* (leaving aside the fact that one can hardly find a legal philosophy before and since Hegel that has responded to this point so substantially). The question of proof represents the hinge between external procedural form, the guarantee conditions and the decision with regard to the particular case as judicial judgment. Precisely because being bound to proof also addresses the material or substantial side of right (the truth of the event that is to be judged), it shows for the first time the tensions that can arise by the normative self-constraints of the administration of justice. This is how Hegel formulates it in § 222 of the *Philosophy of Right*:

In the courts, right takes on the determination that it must be *capable of proof*. The *process of law* puts the parties in a position of having to substantiate their evidence and their legal arguments [*Rechtsgründe*], and to acquaint the judge and themselves with the matter [*Sache*] in question. These *steps are themselves rights*; their course must therefore be determined by law, and they also form an essential part of theoretical jurisprudence [*Rechtswissenschaft*].

PR, 253

There is no truth, perhaps also no decision, at any price. Right must adhere to the available evidence—otherwise the rule of law risks turning into brute force. If, in the case of doubt, the court had to force those involved to reveal knowledge of the truth, it would be the end of right. Yet Hegel also sees that there are limits to juridical justice, for the demand of being provable makes

²⁷ The idea of trial by jury belongs to the founding myth of the post-revolutionary era of the constitutional state.

it impossible to appeal to an internal knowledge of right, a moral standard of justice:

This may outrage someone who knows to be in possession of a right but is denied it, as it cannot be proven. Yet the right that I have must at the same time be something posited; I must be able to represent it, to demonstrate it, for in society the being in itself must also be posited; it must exist externally.

HOTHO 1974, § 222, 983, transl. AS²⁸

Forms of formalism drive right into a paradox (that Hegel does not spell out as such). To the extent that protective procedural forms enable freedom, they must restrict the demand for justice. In the worst case, appealing to formalism may undermine juridical justice, jeopardizing the legitimation of right and the administration of justice.

3.3 *Judicial Judgment and Justice in the Individual Case*

The judge should ensure precisely this legitimation in the shape of fair decisions in individual cases. We will consider the kind of judgment unique to judges, and then discuss its consequences for the concrete legal decision. For this, we will consider once again the penal sentence. According to the present thesis, Hegel prefers a concept of judicial judgment that emphasizes its *inferential side*, i.e. the common and generally controlled application of (legal) concepts. What this ultimately means for Hegel becomes clearer once we consider the relevant passages:²⁹ Reflection is usually taken in a subjective sense as the movement of judgment which transcends an immediately given representation and seeks more universal determinations for it or compares it with such determinations. Kant opposes *reflective* and *determining judgment* (*KU*, Introduction, pp. xxiii ff.) ... reflection is therefore a matter of rising above the immediate to the universal. On the one hand, the immediate

28 Gans puts it more poignantly: "Because the impartiality of the court calls for formalism, someone who has the greatest right can suffer an injustice and be condemned, even when the evidence is missing. Insofar as the judicial process is a means to an end and the proof lies between what is right and the judgment, the process itself may become a source of injustice and a weapon against what is right" (2006, 178, transl. AS).

29 Hegel thus sets himself apart from Kant's semantics of nature and capacity. For Kant, judgment designates a natural capacity that can be individually professionalized, i.e. developed to a "mature" capability, to a "healthy reason" not least by means of "examples and actual affairs." (For a more precise definition of the concept, see fn.1); see also Wieland (1998).

is determined as particular only by being thus referred to its universal; for itself, it is only a singular or an immediate existent. But, on the other hand, that to which it is referred, its universal, its rule, principle, law, is in general that which is reflected into itself, which refers itself to itself, is the essence or the essential.

He continues (now aimed squarely at Kant):

But at issue here is neither the reflection of consciousness, nor the more specific reflection of the understanding that has the particular and the universal for its determinations, *but reflection in general*. It is clear that the reflection to which Kant assigns the search of the universal for a given particular is likewise *only an external reflection which applies itself to the immediate as to something given*.

SL, 350

Hegel's inferentialism does not remain with the subjective reflection on what is immediate and given. (We may set aside the question whether Hegel's interpretation of the Kantian position is satisfactory.) Decisive for every reflected judgment is a conceptual context that we must conceive of as a dynamic network. Presently we do not have available an incontestable subjective standpoint that would allow us to proceed from an opinion to a universal belief. Here, too, it is a matter in principle of what Wittgenstein later called coming to an understanding in judging. The universal (in classical logical semantics), the rule, the principle or the law refer to a normatively secured language game, to a recognized argumentation platform. At the same time, rules and the terminology used (words, definitions etc.) are tied to context-dependent criteria for differentiation, to universal standards for making distinctions. In this way they articulate in the first place an *inference license appropriate to reality*. This is what Hegel aims at when he speaks of reflection in general. In other words, we depend on (conceptually articulated) practices that are guided by reason; we rely on them to disclose the world to ourselves and to say what the case is (Bandom 2001, 2014; Stekeler-Weithofer 2006).

For the administration of justice and case law, this means that the decision concerning the juristic case is the result of rational inference, the free power of judgment. The law demands a conviction gained from the hearing as a whole.³⁰ This is not contradicted by the fact that to a certain extent we must

30 This is how § 261 of the German Code of Criminal Procedure formulates it with a view to the free evaluation of evidence.

learn and practice this decision-making competence.³¹ Rather, it shows instead that, in Hegel's words, juristic action presupposes rectitude (*Rechtschaffenheit*) and education and training. This latter thought in particular is anything but trivial. To the same extent that training and the work of the legal profession is oriented to positive law, to the power and omnipresence of the legislator and to the (self-referential) system of the application of right—a conception that began to gain prevalence in the latter half of the nineteenth century (Prodi 2003, 325)—there is a risk of forgetting the political implications of the concept of right. One can by no means rule out the possibility of jurists becoming technicians, merely acting in the interests of others and mobilizing right in the first instance as an instrument for regulation and social disciplining.

Yet it also follows from the competence of rational, free judgment that a schematic approach to legal questions is expedient only in exceptional and unambiguous cases. This insight of Hegel's is certainly not foreign to present-day juristic methodology and its theory of argumentation, for it is believed that a purely schematic approach or a primacy of deductive reasoning underestimates the premises and semantic contexts of juristic argumentation, or even ignores them entirely (Bung 2004, 145). Yet in this way the demanding structure of every juristic justification comes again into view: for it is necessary not only to make recourse to the “rational culture of reason,” but to take heed of hermeneutic and pragmatic argumentation standards that have been recognized as legitimate (Esser 1972, 22 f.). For this reason, the plausibility of the single judgment may not be determined by means of subjective criteria but rather only on the basis of an inter-subjective consensus (Perelman 1979, 117).³² Even if particular methodological questions are contested and unresolved, one thing at least is clear: Central to reaching a verdict are not questions of subsumption and deduction but rather inferential and recursive decision-making techniques. This does not mean that talk of subsumption is wrong; indeed, even Hegel employs the concept. Yet each person who applies the law must be clear about the fact that a correct decision must factor in further, most often undisclosed reflective steps.

To illustrate this point, consider the following situation. If a judge is led to ask what exactly is to be understood by a particular legal concept, it would

31 Kant rightly points to this when he designates judgment as understanding that “does not come for years” (1996, 93), or when he speaks of a “mature power of judgment” that cannot be substituted by a general provision. (Kant 1928, Reflexion 5237).

32 On this debate, see Alexy (1991); Gabriel/Gröschner (2012); Hruschka (1965, 14); Luhmann (1993, 287); Müller-Mall (2015, 117); Neumann (1986, 16); Röhl/Röhl (2008, 613); Schulz (1999, 133); Seibert (1999, 127).

be inadmissible to restrict this question to a formal subsumption, for this is appropriate only in cases that do not raise any significant problems in the assessment of the facts of the case. Whether the animal that bit the neighbor is a dog or a cat may indeed be a pure exercise of understanding. The reason for this lies, however, in the unambiguity of linguistic practice that underlies this distinction. Here there are conditions of correctness under which things can be schematically subsumed. But if this practice is less unambiguous, which is often the case, then the evaluation is by no means so clear. What qualifies as “someone else’s property” in the context of the regulation of theft (for a theft is at issue only when someone else’s property has been taken),³³ does not entail merely an exercise of understanding but rather requires a precise determination of the *conceptual content* of the phrase “someone else’s” (uncovering normative implication and much more)—even when the conceptual content of the word “property” is sufficiently clear. For example, does an object that is owned by two persons qualify as someone else’s if it is stolen by one of these persons, since it also belongs to another person? If there is a convincing answer to this question it is not because we are dealing with an exercise of understanding in this definition, but rather because there is a practice supported by reasons in which the meaning of the phrase “someone else’s” has emerged.³⁴

Let us summarize: What the case is and which juristic conclusions are permissible arises from a reconstruction of the empirically available facts. The great challenge of judicial judgment consists above all in the fact that sense certainty, that is, the facts determined by the evidence, must be brought back to the concept of right. A subjective insight must be transferred into a universally recognizable belief. Hegel refers to the privileged conscience of judges. The judgment connects a reflective-normative, an epistemic, an empirical-typifying as well as a decisionistic dimension of decision making.³⁵ In § 225 of the *Philosophy of Right*, Hegel formulates this thought as follows:

The dispensation of justice, as the application of the law to the *individual case*, involves *two distinct aspects*: first, a knowledge [*Erkenntnis*] of the nature of the case in its *immediate individuality* [*Einzelzeit*] ... and secondly, the subsumption of the case under the *law* of the restoration of right, which, in criminal cases, includes the punishment.

PR, § 225, 255

33 § 242 German Criminal Code.

34 For a more detailed treatment, see Benno Zabel/Carsten Kalla (2018, 36 ff.).

35 Here Hegel is still arguing, however, with regard to the practice of jury trials.

In the reference to punishment as legal judgment, all the threads of the preceding analysis converge: the meaning of punishment must be grasped as a reflective concept and as a totality of forms of judgment. (It shares this with all other legal judgments). Punishment means the deed is qualified as an injustice and an individual reproach is pronounced. This form of retaliation is connected with further criteria of differentiation, and for this reason it extends beyond revenge.³⁶ In order to substantiate the reproach to its full extent, it is necessary to affirm the subjective knowledge of the deed. Moreover, its objective circumstances such as prior conflicts of interest or situations affecting one's motivation may not cancel out the punishment. Ultimately the injustice, and consequently also the reproach, is to be related to the social relations, as Hegel formulates it in § 218 of the *Philosophy of Right*. Laws, crimes and legal judgments are not concepts or models of language and argumentation somehow located in a vacuum. Quite the contrary: they are signatures of the (shifting) level of freedom of modern communities. This level of freedom is nothing other than a philosophically developed shape of what Hegel has called the free will.

4 Responsive Right and Political Judgment

Has everything now been said? Certainly not. Hegel's concept of juridical judgment marks not only the reality, but also the limits of right as a normative medium of orientation. Hegel himself placed the juristic right in the larger context of a "political right." Right and above all the administration of justice are thus bound back to the *ethos* of the political constitution (of the state as an ethical idea). It is doubtful whether we can establish today such a strong connection between right, the administration of justice and a recognized *ethos* in plural and highly differentiated communities (Böckenförde 1991; Kervégan 2018). On the other hand, Hegel's conception is compelling, i.e. his idea that it is the task of the administration of justice and case law to contain the freedom-negating forces and conflicts that arise and are acted out by the particular interests of the citizens.³⁷ How should we deal with this dilemma? The point of departure could be the insight that right, in all its qualities of instituting

36 This also concerns the treatment of the *sense of justice*, the affect. While current debates are again paying greater attention to this aspect, for Hegel this is not a matter of a legal judgment.

37 For a critical take on this, see Daniel Loick (2017).

freedom and resolving conflicts (that Hegel concedes to it), contains in itself a fragile and ambivalent core.

Following a two-hundred-year history of liberal right, we are aware today that right, precisely in its state form, represents—or at least *may* represent—concrete interests, power monopolies and ideologies. The idea of securing liberal freedom has initiated a dialectic that extends further than what was attested to it in Hegel's time. This means, however, that also the relation of facticity and validity, of individual autonomy and social regulation must be rethought. Thus the normalization and application of punishment, to which Michel Foucault has made us particularly aware, point to a thick fabric of the safeguarding of rights, power claims and disciplining interests (Foucault 1977, 2005; Butler 1997). By no means does this mean that one would have to do without legislation, case law or punishment (or that one *could* do without them). Yet there is no way to get around responding to the structural dynamics. This can be carried out only very roughly, by drawing on the concept of the judgment community.³⁸ We ought to insist, more strongly than did Hegel, on an *interplay of legal and political judgment*.

This interplay may be developed from different sides. One side concerns the self-reflectivity of free communities. *Self-reflectivity* is the expression of the fact that today we are dealing with a strongly condensed network of institutional practices. The impulse of juridification of modernity often leads, however, to interpreting institutions as merely repressive or bureaucratic “shells.” Institutions are not merely authorities or facilities of the constitutional organ, i.e. administration in the narrower sense. Rather, institutions are above all storehouses of knowledge and ways of life, cultures of negotiation and crisis management, that have been transferred to reliable infrastructures. They mark what Rahel Jaeggi has called the *backbone of the social* (Jaeggi 2009). They are the essence of what we want to understand by freedom and equality, orientation media that are at no point taken as given but instead constantly being shaped. Families, schools and citizens' initiatives, and also trade unions, universities and human rights organizations belong to these cultures. In the concept of institutional practices, legal and political standpoints and interests have always been crossing and confronting one another.

This brings us to the second side of the interplay mentioned above, to the power of the political. The *power of the political*, i.e. political judgment, calls attention to how there is need for a decentralized, variously articulated capacity of reflection in order to maintain and further develop the social order. When we

38 See fn 3.

speak of the power of the political, we have in mind emancipatory initiatives, what Hannah Arendt sees as the actual *political*, but equally the project of the rather conservative legal and regulatory *policy*. The political and policy are two sides of one and the same coin (Bedorf and Röttgers 2010). The tensions that they generate and perpetuate must find expression in the concept of a resistant republic, of a resistant freedom. Such a concept not only integrates perspectives of the state and society in the sense of a network of reciprocal responsibilities; it also creates a normative space to critically assess in the first place social pathologies and regressive tendencies or also strategic legal adjustments.

The interplay is completed by the third side, the idea of *responsive right*. Responsivity of right refers to a reflected juridical power of judgment. In focus here is the sensitivity and openness of right for non-legal matters. This does not mean that right would have to renounce its own unique rationality. We should not underestimate the value of the possibilities of a *morally neutral* conflict resolution and a constitutionally defined division of powers. And yet responsivity can ensure, firstly, that already existing concepts of legal guarantee are evaluated and challenged time and again and, secondly, that paths for intervention from society for social participation are opened or arranged more openly. And it means, thirdly, that an awareness is needed among the legal staff, namely, among judges, that the application of law always entails a massive *subjugation of the subjects* (which is especially visible in a criminal process). Applying law and reaching a verdict are acts not merely of juridical but often also of political communication. It thus requires, entirely in Hegel's sense, a perspectival and integrative legal consciousness, so that right need not change to the side of force but instead serve as an argument for freedom.

Every modern legal theory and social theory must take into account this fragile connection of reflectivity and practice, of autonomy and authority—and it must constantly process it anew. Even Hegel's answers deviated somewhat from those of his time. Especially the concept and practice of judgment show how fundamentally Hegel analyzed the problem of freedom in modernity, and that it is worth drawing upon it still today.

Translated from the German by Aaron Shoichet

Abbreviations

- EH* Hegel, Georg Wilhelm Friedrich. 1991. *The Encyclopaedia Logic: Part One of the Encyclopaedia of the Philosophical Sciences*. Translated by Theodor Francis Gerjets, Wallis Arthur Suchting, and Henry Sifton Harris. Indianapolis IN: Hackett Publishing Company.

- EN Hegel, Georg Wilhelm Friedrich. 2007. *Philosophy of Mind: Part Three of the Encyclopaedia of the Philosophical Sciences*. Translated by William Wallace and Arthur Vincent Miller. Oxford: Clarendon Press.
- GW 1968 ff. *Gesammelte Werke. Kritische Ausgabe*. Edited by Deutsche Forschungsgemeinschaft in Verbindung mit der Rheinisch-Westfälischen Akademie der Wissenschaften. Hamburg: Felix Meiner Verlag. GW 12: *Wissenschaft der Logik. zweiter Band. Die subjektive Logik* (1816).
- KU Kant, Immanuel. 1987. *Critique of Judgment*. Translated by Werner S. Pluhar. Indianapolis, In: Hackett Publishing.
- PR Hegel, Georg Wilhelm Friedrich. 1991. *Elements of the Philosophy of Right*. Translated by Hugh Barr Nisbet. Cambridge, UK, Cambridge University Press.
- SL Hegel, Georg Wilhelm Friedrich. 2010. *The Science of Logic*. Translated and edited by George di Giovanni, Cambridge: Cambridge University Press.

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Hegel's Ethical Life as the Attempt to Offer a Home to the Categorical Imperative

Paul Cobben

In the *Phenomenology of Spirit* Hegel characterizes, at the beginning of the Spirit-Chapter, the Greek world as a beautiful ethical world,¹ as a free society in which people can feel themselves at home. But precisely because the Greek world is thematized at this level as a historical world it cannot be understood as a substantial world that is grounded in itself.

In the following stages of the Spirit-Chapter, Hegel reconstructs the European history as a process in which the freedom in itself of the Greek world develops itself from the freedom for itself of the Middle Ages (Christianity) into the freedom in-and-for-itself of the modern world. In the *Encyclopedia of the Philosophical Sciences*, Hegel conceptually clarifies the self-realization of freedom as a philosophical project. At the level of *objective spirit*, the moments in which freedom develops itself do not appear as historical worlds, but rather as logical moments that are part of the concrete entirety of the concept of freedom. In the *objective spirit*, the ancient world, the Middle-Ages and the modernity are transformed into logical moments of the ethical world, namely into family, civil society and state. In this ethical world, according to Hegel, freedom has adequately realized itself.

Hegel's concept of *objective spirit* seems to be a reaction to Kant's practical philosophy. The categorical imperative offers Kant's moral subject a clear criterion to realize his freedom. This criterion, however, appears to be so universalistic that the reality of freedom becomes problematic. The moral 'ought' does not allow to be overcome. Freedom is not able to find a home in which it can stay once and for all. Hegel, on the contrary, presents the ethical institutions as the house of freedom. Participation at the ethical institutions is sufficient for the realization of freedom. In the ethical institutions of the *Rechtsstaat*, family, civil society and state, the moral individual finds the social context that

1 "Spirit is the ethical life of nation in so far as it is the *immediate truth*—the individual that is a world. It must advance to the consciousness of what it is immediately, must leave behind it the beauty of ethical life, and by passing through a series of shapes attain to a knowledge of itself" (PS, 265).

it enables him to bring his actions in correspondence with the three formulations of the categorical imperative. Actions of the family have the form of a general law, actions of the corporation value the person as end in himself and the actions in the state realize the realm of ends.²

However, the question can be raised whether the categorical imperative can be observed in this way. It is not perfectly clear how the development of the concept at the level of the *objective spirit* is related to the real individual. Insofar as Hegel determines the institutions of ethical life as real institutions it is no longer about pure moments of the concept of freedom, but rather about specific historical forms of appearance of these moments of the concept. Therefore, the real individual has to answer the question of to what extent the institutions of his time adequately express the ethical life.

Jan Hollak brings forward the thesis that Hegel presents the entirety of his philosophy in three forms: in the *Encyclopedia* in the form of being-at-itself, in the *Phenomenology* in the form of being-for-itself and in the *Philosophy of History* in the form of being-at-and-for itself.³ I support this interpretation and draw the conclusion that the entrance we as real individuals have to the *objective Spirit* has to be conceptualized from the point of view of the *Phenomenology of Spirit*.

Although Hegel's *Philosophy of Right* seems to express the logical process in which the free will realizes itself, this does not include all what happens at the level of *ethical life*. The three moments of the ethical life not only develop the logical moments of ethical reality. The institutions of ethical life can at the same time be understood as the institutional form in which the real individuals are involved in a process of education that makes them carriers of the ethical institutions. In this way the historical process of culture that is thematized in the spirit-chapter of the *Phenomenology of Spirit*, in a specific way, gets a place in the ethical institutions of the *Philosophy of Right*, namely as the process of

2 The three formulations are: "Handle so, als ob die Maxime deiner Handlung durch deinen Willen zum *allgemeinen Naturgesetze* werden sollte" (Kant 1965, 43); "Handle so, dass du die Menschheit, sowohl in deiner Person als in der Person eines jeden anderen, jederzeit zugleich als Zweck, niemals bloß als Mittel brauchst" (Kant 1965, 52); "die Idee des Willens jedes vernünftigen Wesens als eines allgemein gesetzgebenden Willens [zu denken, P.C.]" (Kant 1965, 54).

3 "*Phenomenology of Spirit*, system and philosophy of history have their *identity* in the idea—their shared content—and, at the same time, distinguish themselves into the self-distinctions of the idea. The idea distinguishes its own content as *pure idea* (system) of the appearing concept (the *Phenomenology*) and the concept that becomes real (philosophy of history), i.e. of the concept insofar as it returns to itself in the form of consciousness and the concept insofar as it gets factual reality in history" (Hollak 1962, 357, my translation).

education that makes the individuals carriers of these ethical institutions. The historical situatedness of this process of education can be overcome if it is not considered as an education that makes the individuals carriers of specific ethical institutions, but rather, more abstractly, of institutions that are only determined in their logical form: as moments of the logical realization of the free will. In this contribution, I will investigate, restricting myself to the first and the second moment of ethical life, what the elimination of the historical situatedness implies. It will become clear that education at the level of family will perform itself within a network of friends and at the level of civil society within a network of social institutions (and finally, at the level of the state, within a network of states).

1 The First Moment of Ethical Life

Hegel elaborates the first moment of ethical life as *marriage* and interprets marriage as an institution as it appears in the nineteenth century. From a logical point of view this moment is determined as the unity of the first moment of *abstract right* (the *abstract person*) and the first moment of *morality* (*purpose and responsibility*). To understand the reality of marriage, therefore, Hegel has to discuss which development the real individuals have to pass through to develop themselves into carriers of the first moment of ethical life. In the *Philosophy of Right* Hegel elaborates this development as the process in which the children become adults: the children leave the family as free and equal persons and, consequently, overcome the immediate tradition in which they are thrown by birth. This makes them carriers of the first moment of *abstract right* (of the *abstract person*). Under the condition of the first moment of morality (*purpose and responsibility*) two persons (man and woman) can constitute their marriage.

To detach the first moment of ethical life from its elaboration in Hegel's time, I will investigate to which extent this development is necessary. This is possible in an appeal to the Spirit-Chapter of the *Phenomenology of Spirit*. In this chapter, beginning with the beautiful ethical world of the ancient Greeks, Hegel reconstructs European history as a necessary process in which the conditions for the adequate form of ethical life are developed. Can this historical process be conceived of as a format for the development of the child?

In the polis, the real individual is a living being that is thrown into the world by its birth. The living individual can be understood as a human, self-conscious individual if it participates at a social organism, i.e. at the tradition of an immediate ethical order that can be understood as the expression of a human

law. This human law is observed by state citizens who are natural individuals insofar as they belong to a family. Each family is a traditional community that in a harmonious way is a moment of the encompassing state.

The traditional life of the polis can be considered a subjective maxim that is collectively shared by those who live in the families of the polis. (It is true that the families can have their own collective maxims, but only insofar as these are in harmony with the collectively shared maxim of the polis). To transform the citizens into carriers of the first moment of ethical life in the *Philosophy of Right* it has to become clear which education they have to pass through (and how this education can be institutionalized). The citizens have to emancipate themselves from the situated freedom of the shared subjective maxim and have to gain a position in which their freedom is universal. The development of the polis has to be understood as a process in which the citizens are educated into abstract persons.

Real family life of the polis is part of the harmonic entirety of the many families. At the level of the state the families are represented by the citizens who together realize the *good life* of the state. The citizens as the heads of the families are, so to say, the *servants* who have recognized themselves in the human law (their *lord*) and know that they realize their autonomy by observing the human law of the state.⁴ At the level of the lord/bondsman-relation, Hegel already has laid down that a self-conscious individual can only serve the lord as a bondsman if he has experienced the fear of death, i.e. if he is internally free and recognizes its free essence in the lord.⁵ This means that the citizen can only serve the human law as his lord if he recognizes the human law as his absolute essence. In the *religion in the form of art* (PS, 424 ff.) of the Greek world this recognition is represented: in the statue of the god, for example the statue of Athens (Cobben 2009, 64), the human law (the state) is represented as an absolute essence. The serving of the lord by the observation of the human law, that in itself is a finite action, is represented as the realization of an absolute action, namely as the realization of a god. In the further development of the *religion in the form of art* it becomes clear that the adequate realization

4 "As *actual substance*, it is a nation, as *actual consciousness*, it is the citizens of that nation. This consciousness has its essence in simple Spirit, and the certainty of itself in the *actuality* of this spirit, in the nation as a whole; it has its truth, therefore, not in something that is not actual, but in a Spirit that exists and prevails. This Spirit can be called the human law" (PS, 267).

5 "The *truth* of the independent consciousness is accordingly the servile consciousness of the bondsman. [...] as a consciousness forced back into itself, it will withdraw into itself and be transformed into a truly independent consciousness" (PS, 117).

of the absolute essence of the real individuals cannot be expressed in a representation besides the real individuals. At the end, the absolute essence of the individual is understood as the free form of the individual, i.e. as *persona*.⁶ As a person the individual understands his action as free action, as a lawful action that is grounded in the freedom of the person himself. Parallel to the process in which the Greek citizen develops himself to the free person, the development of the child into a grown-up person can be understood. Elsewhere I have elaborated how the education of the child to person can be reconstructed with the help of the forms of the *religion of art* if these forms are translated into forms that can be derived from the context of family life (Cobben 2009, 158 ff.). Therefore, the historical development of the polis is in line with the development of the child insofar as it results in the real individual as carrier of the first moment of abstract right. But how the real individual can also become a carrier of the first moment of morality and integrate this moment in his role as abstract person?

The citizen who has been developed into a person, realizes himself by realizing his freedom. This realization corresponds to the realization the categorical imperative in its first formulation. The person must act in a way that his actions have the form of a general law. However, it appears to be impossible to realize this kind of action. Different from the situation at the level of the polis, actions can no longer be conceived of as expressions of immediately given, collectively shared subjective maxims. It is true that this problem is solved at the level of Roman law in such a way, that the persons are heads of the family while the members of the family conform their actions to the maxims of the heads of the family. In this way the actions of the family again appear as shared subjective maxims. This solution, however, is not able to guarantee the harmony of society in general. Therefore, the Roman Empire gets lost because of its internal contradiction.⁷

The contradiction of the Roman empire can only be overcome if the real individuals have experienced that their freedom as person is not dependent on a contingent legislation (in the Roman Empire an individual can or cannot require the rights of a person), but rather is inherent to the individual as such. With the ruin of the Roman Empire the individuals experience the absolute loss of the reality of their freedom. But precisely because they experience this

6 "Personality, then, has stepped out of the life of the ethical substance. It is the independence of consciousness, an independence which has *actual* validity" (PS, 290).

7 "Legal personality thus learns rather that it is without any substance, since the alien content makes itself authoritative in it, and does so because that content is the reality of such personality" (PS, 293).

absolute loss (i.e. the fear of death) they can preserve the essence of their freedom as an absolute, above-historical essence. In relation to an abstract, immutable being, to an abstract conscience, the persons represent their freedom as an essential being in which they transcend their finitude.⁸

Like the persons in the Roman empire, also the grown-up children experience that they cannot realize their freedom. Although they can exchange properties, there is however, no guarantee that they can successfully realize these exchange relations. As long as the properties have a contingent content, the grown-up children are in the same situation as the persons of the Roman Empire. Finally, they will be confronted with an objective world that does not allow the realization of their freedom as person: potentially this world is the source of the fear of death. Like the persons of the Roman Empire the grown-up children overcome this fear of death by an experience that transforms them into the *unhappy consciousness*: they internalize the external content as an immutable being, that is their absolute essence as a “Jenseits.”⁹ They understand their being-a-person as grounded in their absolute essence (represented as the Christian god).¹⁰ I will explain under which conditions this experience can transform the grow-up children into carriers of the first moment of the ethical life (the synthesis between the first moment of abstract right and the first moment of morality, *purpose and responsibility*). To do this, I have to relate to Hegel’s expositions at the level of *subjective spirit*.

At the level of *subjective Spirit*, Hegel has laid down that the natural individual has to be understood as *soul*, i.e. as a microcosmos that encompasses in itself the entirety of the macrocosmos.¹¹ The natural individuals are involved

8 “Earlier we saw the Stoical independence of pure thought pass through Scepticism and find its truth in the Unhappy Consciousness—the truth about what constitutes its own true being. If this knowledge appeared then merely as the one-sided view of consciousness as consciousness, here the *actual* truth of that view has become apparent” (PS, 293).

9 “Consequently, the duplication which formerly was divided between two individuals, the lord and the bondsman, is now lodged in one. [...] the *Unhappy Consciousness* is the consciousness of self as a dual-natured, merely contradictory being. [...] Since it is, to begin with, only the *immediate unity* of the two [lord and bondsman, P.C.] and so takes them to be, not the same, but opposites, one of them, viz. the simple Unchangeable, it takes to be the *essential* Being; but the other, the protean Changeable, it takes to be the inessential” (PS, 126 f.).

10 In the realm of culture, the forms of the unhappy consciousness are historically exemplified as forms of the Belief (Cobben 2002, 180–185). At the level of religion, these forms of Belief, have developed themselves as forms of the *unrevealed religion*: god the father, the son and the Holy Spirit (Cobben 2018, 94 f.).

11 “Man kann, gegenüber dem Makrokosmos der gesamten Natur, die Seele als den Mikrokosmos bezeichnen, in welchen jener sich zusammendrängt und dadurch sein Außereinandersein aufhebt” (*Enz*, Zusatz § 391).

in the totality of nature because they are part of nature's interplay of forces. At the same time, the natural individuals are situated, i.e. that they have their own body is, so to say, the point of departure for their relation to the external world. They disclose the external world in their own way. This situatedness implies that the natural individuals do not have a free and equal relation to one-another. They have not yet developed themselves into grown-up persons. They are thrown into the world and within this world some friendship relations can immediately be given.¹² These friendship relations could be referred to, to speak with Goethe, as "Wahlverwandschaften", soul brotherhoods (cf. Goethe 2008). As certain natural elements can be "wahlverwandt" because they react on one-another, so natural individuals can also be "wahlverwandt" because they have an immediate, affective bond.

If the natural individuals have become grown-up persons they can transform their "wahlverwandte" relations into self-conscious friendships. In self-conscious friendship-relations the individuals relate to one-another as persons. In friendship, however, the interpersonal relation does not have the form of exchanging properties. It is true that the persons express their freedom in their properties. But, in contrast to the level of *abstract right*, these properties cannot be considered merely external things. Only if these things correspond to the first moment of morality (*purpose and responsibility*), they express the person's freedom towards his friends. Under this condition the thing expresses the purpose of the person.

What, however, does it mean that the thing expresses the *purpose* of the person? At the level of morality, it is about the development of *conscience*. Since *purpose and responsibility* is the first moment of *morality*, it can be interpreted as an immediate version of *conscience*. Insofar as the thing expresses the purpose of the person, it expresses *that* the person has an absolute subjectivity (although it is still impossible to determine the content of this subjectivity). The *purpose* of the person can be compared to the *immutable being* of the person who survived the ruin of the Roman Empire.¹³ Although the *immutable being* is an absolute essence that remains "jenseits" and has no determined content, the absolute essence of the person can be realized as *purpose*. *Purpose*

12 "In mir, als *bestimmten* Individuum erhalten dieselben [Triebe und Neigungen, P.C.] erst einen *bestimmten* Inhalt. So wird zum Beispiel die Liebe zu den Eltern, Verwandten, Freunden usw. in mir individualisiert; denn ich kann nicht Freund usw. *überhaupt* sein, sondern bin notwendigerweise mit *diesen* Freunden *dieser* an *diesem* Ort, in *dieser* Zeit und in *dieser* Lage lebende Freund" (Enz, Zusatz, § 406, 144).

13 In realizing the *purpose* the person realizes the god who is represented as the immutable being or as *god the father*.

appears in things insofar as the person takes his responsibility for them and recognizes them as the immediate expression of his subjectivity. As expression of subjectivity these things have *use-value*: as the immediate expression of subjectivity they have a subjective meaning. Insofar the persons are involved in immediate friendship-relations, they will share use-values with their friends.¹⁴ Only by mediation of shared *use-values* friendship can become self-conscious. Self-conscious friendship can be determined as self-conscious decisions of persons that they share *use-values*, i.e. that they mutually recognize which things are expression of their subjectivity. In these decisions the first formulation of Kant's categorical imperative "Handle so, als ob die Maxime deiner Handlung durch deinen Willen zum *allgemeinen Naturgesetz* werden sollte." (Kant 1965, 54) is realized. The judgment that a property has *use value* (expresses subjectivity) results in actions that have the form of a law. The property is used to realize subjectivity; the telos of the actions in which the property is used concerns the expression of subjectivity. Within the friendship relation, these actions are at the same time necessary, because this relation is based on the mutual recognition that the property has *use value*.

The logical realization of the first moment of ethical life has to be distinguished from the individuals who are carriers of this moment. Although the expression of the subjectivity in use-values is immediately given, their awareness of the use value of things is the result of a process of education. Insofar as the individuals participate in a network of friends they develop this awareness step by step. But they remain involved in an ongoing process of education that will never end.

It is well known that Hegel objectifies the first moment of ethical life as the *family* in which the marriage between man and woman is central. Now we can conclude to which extent Hegel's conception of this first moment is indeed a specific historical form.¹⁵ Also for Hegel, the first moment of ethical

14 The meaning of *use value* in this context is rather complicated. A jersey, for example, can be my property. I can use this jersey to protect my body and consider this function of the jersey its use value. In this case, however, use value is not understood as expression of my subjectivity. It is however possible that the jersey nevertheless expresses my subjectivity. In some way it can typically belong to my individuality that I have such a kind of jersey. But the use value of the jersey is not dependent from what the jersey is in itself. I can share the use value of the jersey with my friends because they can recognize that the jersey in some way expresses what typically belongs to my individuality.

15 Also Axel Honneth (2011) tried to re-actualize Hegel's domain of the family. Since Honneth, however, thinks that this re-actualization must be separated "vom Hintergrund seiner [i.e. Hegel's p.c.] Geistmetaphysik" and must be elaborated in the framework of Habermas' theory of communicative action, this re-actualization fails as a re-actualization of Hegel. See Cobben (2012, 129 ff.).

life is constituted by the free decision of the grown-up children to conceptualize their natural content in an institutional context. But this time the many friends are reduced to the monogamous love between man and woman. All actions that can contribute to the free reproduction of natural individuals (eating, drinking, living, loving, recreating, raising children, educating) are concentrated in the institution of marriage. In our time, however, we experience that the distinct actions can be located in distinct forms of the institutionalized relations of friendship. It is true that the institutions of friendship are not in the same way formalized as marriage (most of the time the decision to become friends is not embedded in a solemn or juridical procedure), but nevertheless it is about free decisions to freely shape the “Wahlverwandschaft” in shared use values.

For Hegel the first moment of ethical life is probably at best exemplified in the institution of marriage. There seem to be, however, more principal grounds to understand marriage as the realization of the first moment of ethical life. Marriage reproduces its preconditions: it is not only constituted by grown-up children, but has the grown-up children also as its result. This kind of reproduction not necessarily is linked with the other friendship relations. Moreover, the multitude of friendship relations seems to invoke a problem. If the natural content of the individual has to be brought to awareness in many friendship relations, the identity of the individual can only be conceived of if the many friendship relations are internally connected.

At the level of *subjective spirit*, Hegel has discussed that the sexual relation cannot be understood as a relation between real individuals. In the sexual relation, the individual is related to itself.¹⁶ Therefore, the immediate moment of

16 “Das Moment des reellen Gegensatzes des Individuums gegen sich selbst, so dass es *sich* in einem *anderen* Individuum sucht und findet;—das *Geschlechtsverhältnis*, ein Naturunterschied einerseits der Subjektivität, die mit sich einig in der Empfindung der Sittlichkeit, Liebe usf. bleibt, nicht zum Extreme des Allgemeinen in Zwecken, Staat, Wissenschaft, Kunst usf. fortgeht, *andererseits* der Tätigkeit, die sich in sich zum Gegensatz allgemeiner, objektiver Interessen gegen die vorhandene, seine eigene und die äußerlich-weltliche Existenz spannt und jene in dieser zu einer erst hervorgebrachten Einheit verwirklicht. Das Geschlechtsverhältnis erlangt in der *Familie* seine geistige und sittliche Bedeutung und Bestimmung” (*Enz*, § 397). Insofar as the immediate relations between individuals are determined by drives (including sexual drives) the individuals remain in these relations at themselves. Only if the individuals have developed into persons, the drives can be understood as the particular content of the individuals (which content can be expressed as use value) that can be distinguished from the objective interests (expressed in exchange values). It remains unclear, however, why the particular content should one-sidedly be assigned to the woman and the objective interest one-sidedly to the man.

ethical life can only be understood as the immediate relation between the individuals has become self-conscious. But it is not clear why this self-conscious relation is exclusively related to man and woman. The immediate form of ethical life rather has to be understood as the self-conscious form of the immediate "Wahlverwandtschaft" between real individuals. It is true that in this relation the corporeality of the individuals plays its role, but this corporeal relation is essentially distinguished from a biological relation that is oriented to reproduction. The "Wahlverwandtschaft" between real individuals concerns a situated relation between concrete totalities that are infinitely differentiated. This differentiation is completely different from the binary particularization between biological sexes.

2 The Second Moment of Ethical Life

Hegel determines the corporation as the institution that realizes the second moment of ethical life in his time.¹⁷ From a logical point of view this moment has to be understood as the synthesis between the second moment of *Abstract Right (Contract)* and the second moment of *Morality (Intention and Welfare)*. To become carrier of these logical moments the real individuals have to pass through a process of education. This time, however, the process of education is not (as at the level of the family) embedded in the corresponding ethical institution (here: the corporation), but is rather presupposed to this institution. Point of departure of this process of education are the real individuals who have already passed through a first process of education at the level of the family. They have already gained insight into their immediately given self (because they are part of a network of friends). At the level of the family, however, freedom cannot adequately be realized. Even if the individuals succeed in bringing their network of friends in a harmonious unity, the actions of an individual in the service of his network of friends can still clash with comparable actions of another individual.

The network of friends is a traditional community that as a finite community exists besides other networks of friends. Therefore, the entire society exists as a multitude of networks of friends (Hegel: as a multitude of families). The persons not only belong to a network friends, but are also related to all other persons. The relation between the persons is mediated by the exchange of

¹⁷ "Zur Familie macht die Korporation die zweite, die in bürgerliche Gesellschaft gegründete sittliche Wurzel des Staates aus" (PR, § 255).

properties (conforming to the second moment of *abstract right: Contract*). The exchange of properties, however, is not guaranteed as long as the properties have only *use value* for a network of friends. Properties that have *use value* for a network of friends not necessarily have *use value* for persons who do not belong to this network. Consequently, the exchange of properties will fail. Only under the condition of the second moment of *morality (intention and welfare)* the exchange of properties can be guaranteed. Under this condition the properties do not only have (subjective) *use value*, but also *objective value*, or *exchange value*. The properties are the result of actions that are *intended*, i.e. the actions are based on insight in the laws that underlie the reality in which the actions are performed. Precisely because of this insight these actions produce objective values: properties that have use value because they serve the good life, i.e. that have use value as such, exchange value.

The relation between use value and the objective value seems to be expressed when the persons exchange their properties. Karl Marx has analyzed this relation as the value form of the commodities (Cobben 2015, 12 ff.). The objective value of a use value can be expressed as exchange value, i.e. as the ratio in which it can be exchanged to the use value of another person. In this way, however, the determination of objective value remains coincidental, because the other use value can have many qualities, so that the exchange ratio can have many variations. Only if there exists a use value that exclusively is used to express the objective value of other use values (i.e. money), the commodity has an adequate value form. The existence of money, however, presupposes that all persons participate at a market in which all use values are compared to one-another. Money only exists if the use of the commodities is institutionally mediated by the exchange at the market. Money only exists if the many persons constitute a *system of needs*. Marx introduces the notion of the fetish character of the commodities to indicate that their use value is inessential and is only the subjective way of appearance of their objective value.

If Marx's analysis is right, the grown-up children (the free and equal persons) can only experience alienation at the free market. The subject of the market is not the free person, but rather *capital*, i.e. objective value that wants to create more objective value. In Hegel's (normative) conception of the free market, the free persons remain the subjects of their actions insofar as they realize the second moment of *morality (intention and welfare)*. From this perspective the commodities at the market have only objective value insofar as they can serve the objective welfare of the persons. Therefore, the commodities at the market have an absolute meaning. Not because they express as fetish an absolute power that is not understandable, but because their objective value expresses the absolute essence of the persons. In the exchange of commodities, the (moral)

persons realize their objective freedom. In the exchange of commodities the contract relation between the persons has a real meaning.

The question is, however, which development the real individuals have to pass through to become carriers of the second moment of morality. The persons at the market are not immediate natural individuals. As product of a network of friend, they have already an elementary form of *conscience* (the first moment of morality that in which the real individuals have realized their absolute being, represented in the first form of the Christian religion: god the father). As participants of the market they experience that they can no longer realize their absolute essence. In contrast to the network of friends, the other persons do not recognize their subjectivity and can even refuse any recognition (if no properties are exchanged). Therefore, the persons can only maintain the certitude to have an absolute essence, if they assume that this absolute essence is not contradicted by the objective relations of the market. This assumption is reflected in the new representation of the absolute being: the god who appears in the objective world (as Christ). This assumption can be compared with the normative condition that is expressed in the second formulation of the categorical imperative in which the holiness of the person is expressed. No person may be reduced to merely a thing. The realization of the absolute essence of the persons or their observation of the categorical imperative in its second formulation would succeed if they exchange their commodities according to the *objective value* (*exchange value*) of the commodities. In that case, they appear in the objective value of their commodity, i.e. they contribute to the realization of the good life of their community. The expectation to realize *objective value*, however, remains *ideological* as long as it is not clear how the real individuals develop insight in the *objective value*. Only if this insight is realized the real individuals are not only carriers of the second moment of abstract right (*contract*), but also carriers of the second moment of morality (*intention and welfare*) so that they can realize the second moment of ethical life. Therefore, we must investigate whether this insight can be established if the real individuals participate at the market under the condition of the new representation of their absolute being: the god who appears as human self.

In the *Phenomenology of Spirit*, Hegel discusses how the vassal, a historical exemplification of the *unhappy consciousness*, is related to *wealth* and *state-power*.¹⁸ In the *realm of culture* the vassals serve the state-power and receive wealth as favor in return. In their service of the state-power the vassals give

¹⁸ The real individuals can represent the second moment of *morality* as the second moment of the revealed religion (the second moment of Christianity: Christ as the son of God). This moment is anticipated at the level of the *realm of education* as the second moment

the state-power an own self in the form of the monarch. In the *language of flattery* they affirm the monarch again and again as the absolute self of state-power.¹⁹ This development appears to have an analogon in Marx's analysis of the capitalist market. The persons at the market give the *exchange values* an absolute self. If they again and again exchange their *use values*, they realize at the market the objective value of their commodities. This makes that exchange value appears as an absolute subject, namely as Capital that uses the process of exchange to generate more and more *exchange value*.

In his service of the monarch, the vassal still is not able to reconcile state-power and wealth. As long as he receives wealth in exchange of his service his action remains suspect because wealth could be the actual motive of his action. State-power and wealth are related in an abstract-negative way. Therefore, the vassal can only prove that his actual motive concerns state-power if he has served it until death. But death at the same time means the end of his service. In an analogous way, the person at the market (in Marx's analysis) cannot reconcile *exchange value* and *use value*. It is true that the commodity realizes in the exchange its *exchange value*, but as long as the person survives it is not clear whether the actual motive of the exchange rather concerns the new use value that the exchange brings about. This would mean that not the infinite self of capital has primacy, but rather the finite self of the living individual. Once again exchange value and use value are related in an abstract-negative way.

Only if the person has totally sacrificed his finite self, he proves that the realization of the absolute self is seriously intended. He could demonstrate this sacrifice by serving the realization of capital in a murderous competition that leads to the highest value production. But only if this competition has resulted in his death he has definitely proven that his own interest has no importance. The death of the person, however, means at the same time the end of actions in service of the absolute self.

The realization of the absolute self is only possible if the production of exchange value no longer contradicts the life of the person. This is possible under the condition that the struggle for life and death is transformed into the lord/bondsman-relation. At the level of the realm of culture, this transition is discussed as the noble consciousness that serves the state power in his labor.²⁰

of the *unhappy consciousness*, i.e. the *unhappy consciousness* that looks for his absolute being in the real world.

19 "The result is that the Spirit of this power is now an *unlimited monarch: unlimited*, because the language of flattery raises power into its purified *universality*" (PS, 310).

20 "Self-consciousness, thus enriched by the universal power, exists as universal beneficence, or is *wealth* which is itself in turn an object for consciousness" (PS, 312). "The

This labor results in a process of culture that finally is expressed in the *language of disruption*.²¹ The *language of disruption* explicates how the essential moments of the labor process continuously turn over in one-another. Labor that serves objective value turns over into labor that serves subjective value and vice versa; the noble consciousness turns over into the suspicious consciousness and vice versa.²² Here it becomes clear that the spiritual moment of value cannot plainly have validity beside the corporeal moment. Labor that realizes objective value is not an abstract negation of labor that realizes subjective value.

Finally the *language of disruption* results in the disrupted consciousness.²³ In that case, the noble consciousness is related to the wealth that is dominated by the state-power and in which he can or cannot participate. This clarifies that the extremes (self-consciousness and the world of things) turn over in one-another. The *language of disruption* transforms into *pure insight*.²⁴

The education (culture) that is explicated in the *language of disruption* seems to return in the *Philosophy of Right*. This makes that wage labor passes through a theoretical and practical education (*PR*, § 197) that has the result that the labor product appears as the wealth that opposes wage labor as an alienated thing. Insofar as wealth is produced through a labor process that is completely rationalized, the labor products can be understood as expression of *pure insight*, namely as expression of the working of nature that is conceptually seen through. At closer view, however, Hegel performs in the *Philosophy of Right* a shift that makes education no longer a process in which the external

noble consciousness, then, is not related here to the object as an essence in general; on the contrary, what is alien to it is its own *being-for-self*. It *finds* confronting it its own, but alienated, self as such, in the shape of an objective fixed reality which it has to receive from another fixed being-for-self" (*PS*, 313).

21 "The language of this disrupted consciousness is, however, the perfect language and the authentic existent Spirit of this entire world of culture" (*PS*, 316).

22 "It is this absolute and universal inversion and alienation of the actual world and of thought; it is *pure culture*. What is learnt in this world is that neither the *actuality* of power and wealth, nor their specific *Notions* 'good' and 'bad', or the consciousness of 'good' and 'bad' (the noble and the ignoble consciousness), possess truth; on the contrary, all these moments become inverted, one changing into the other, and each is the opposite of itself" (*PS*, 316).

23 "The disrupted consciousness, however, is consciousness of the perversion, and, moreover, of the absolute perversion. What prevails in it is the Notion, which brings together in a unity the thoughts which, in the honest individual, lie far apart, and its language is therefore clever and witty" (*PS*, 317).

24 "The positive object is merely the *pure I itself*, and the disrupted consciousness '*in itself*' this pure self-identity of self-consciousness that has returned to itself" (*PS*, 321).

reality in general is conceived of as expression of *pure insight*. This process is rather reduced to a certain historical period in which education is not related to labor in general, but to a specific historical form of labor, namely wage labor. The cultivation of wage labor makes it more and more mechanical and finally enables its automation.²⁵ Labor that can be replaced by a machine is reduced to a thing and can become completely superfluous. Hereby, however, Hegel refers to historical conditions that cannot be reconciled with his normative project. Wage labor cannot be understood as a realization form of freedom because freedom is completely ruined in it. Therefore, also the sublation of the enraged consciousness into *pure insight* cannot be understood as the proletarian class consciousness that develops itself into a communist consciousness that realizes the free society. It is rather about the free person who understands that his freedom does not exist beside the objective world, because this objective world is conceptualized in the free consciousness. Hegel discusses this relation as the *System of Justice*, the *Rechtspflege* (PR, § 200 ff.).

The question is, however, how the process of culture and the transition into the *pure insight* can be understood if the concept of labor is not reduced to wage labor. Labor that is reduced to mechanic action is nothing else than practical formation of natural material. Only labor that does justice to humans as spiritual beings can be characterized as human. Human labor is performed by a *bondsman* who cultivates nature in service of a *lord*. At the level of *civil society* this lord is represented in the second moment of the *revealed religion*: the *realm of the son*.²⁶ Therefore, the rationalization of labor cannot one-sidedly be understood as a process that is dictated by market relations, but is rather linked with the self-consciousness of labor. Hegel is right when he, in the *Philosophy of Right*, discusses the theoretical and practical education of the laborers. But the result of this education cannot be understood as mechanical wage labor. The rationalization of labor means that the laborers acquire more and more insight into the labor process. The labor system that appears as manifestation of the concept, is at the same time represented as the realization of the absolute being that the laborers have represented as the *realm of the son*. Better insight into the labor process can indeed result in the automation of certain moment of this process. And indeed this automation can invoke an

25 "Die Abstraction des Produzierens macht das Arbeiten ferner immermehr *mechanisch* und damit am Ende fähig, dass der Mensch davon wegtreten und an seine Stelle die *Maschine* eintreten lassen kann" (PR, § 198).

26 This representation concerns my reconstruction of the process of education that the real individuals pass through. In Hegel's exposition this moment is realized as the second moment of morality: *intention and welfare*.

enraged consciousness. The enraged consciousness, however, is not caused by labor that is reduced to a thing (an automatized machine) and makes laborers superfluous. It originates rather from the experience of the laborers that, on the one hand, the productivity of labor and consequently the production of exchange values is more and more dependent from their insights, but, on the other hand, that they do not share in the increased wealth that is produced. In other words, they experience that the increase is not a one-sided objective process, but is rather dependent on subjective presuppositions, namely on the belief that motivates them to realize their absolute being. At the same time the enraging creates the conditions to overcome itself. The experience of enraging learns the persons that they will not succeed to find their absolute being as an objective self. The absolute being rather has to be understood as the spirit of the community in which the many persons realize their freedom. In the religion, this spirit is represented as *Holy Spirit*. The attempt to realize this *absolute spirit* overcomes the presuppositions of enraging. The crux of the enraging was the opposition between state-power and wealth, between labor in service of capital and labor in service of the domain of the family, between the production of exchange value and the production of use value. In the cultivation of labor this opposition is sublated. If the mechanical moment of this labor is excluded, the moment that be characterized as the production of use value (the labor of a real individual that is related to particular labor conditions) immediately coincides with labor in the service of the *good life*. The production of wealth no longer can be distinguished from the realization of state-power (in the *Philosophy of Right*: the *Verstandesstaat*). In that case the labor process immediately expresses the concept that the laborer underlies his actions.

In the *Phenomenology of Spirit*, the sublation of the opposition between Enlightenment and Belief leads to the *absolute freedom* and, consequently, to terror.²⁷ In the *Philosophy of Right*, this terror can be prevented. After all, the persons at the free market already have a *conscience*. In the process in which the persons are cultivated into carriers of the logical moments of the *civil society*, conscience is anticipated in the form of the religious representation (god as the *Holy Spirit*). This means that the realization of absolute freedom is not performed, as in the *Phenomenology of Spirit*, through the action of the particular individual, but rather through the action of the ethical community that realizes absolute freedom in a particular historical form. At the level of the

27 "The sole work and deed of universal freedom is therefore *death*, a death too which has no inner significance or filling, for what is negated in the empty point of the absolutely free self. It is this the coldest and meanest of death, which no more significance than cutting of a head of cabbage or swallowing a mouthful of water" (PS, 360).

civil society, the absolute freedom has the form of being-for-itself, i.e. at the market the persons have developed the insight how they subjectively can participate at the ethical community. Only at the level of the state, the absolute freedom is developed in the form of being-at-and-for-itself and has the ethical world become a self-conscious entirety. At the level of *civil society*, however, the entirety of the ethical world already implicitly is presupposed throughout, namely as *external state* (*Verstandesstaat*, *PR*, § 183). In the *System of Justice* the *Verstandesstaat* is institutionalized in the self-conscious form of the law. At the level of *Police* (*PR*, § 231 ff.), the conditions are given that generally enable the persons to participate at the market relations that are based on the distinctions of the *System of Justice*. Finally, the *corporations* are the action communities in which the persons can realize their subjective welfare and the second moment of ethical life. In the network of corporations the good life is realized in an immediate historically given form.

Insofar, however, the corporations one-sidedly are understood as production communities²⁸ the concept of labor still filters through that it is reduced to wage labor. Than it seems that the institutions of subjective self-realization can be understood from the objective determinations of the world of things (namely the distinct branches of labor). At the level of *civil society*, the many persons cooperate in institutions that are mediated through contracts. It is not only about companies, but also about sport clubs, churches, rural communities, scientific societies, societies for carnival, music, dance or theater, orchestra's etc. It is about societies that each contribute to the shaping of the *good life*. On the one hand, these societies are distinguished from the cooperation of family life (in which the living-together of the individuals is immediate and not a cooperation between free persons) and, on the other hand, they are distinguished from the state (in which the citizens strive after the *good life* as such). Under influence of the freedom of the persons, the natural, traditional content that the forms of cooperation can have (guilds, villages, activities of culture, churches) is subjected to a process of rationalization that opposes the particularity of tradition.

In the *Philosophy of Right*, however, the enlightenment of rationalization is not a process at itself because the transition to absolute freedom already has been performed throughout. This time, the process of enlightenment is grounded in the person who wants to realize himself as absolute self (represented in the realm of the son). If it has become clear that the social institutions are the

28 "Das Arbeitswesen der bürgerlichen Gesellschaft zerfällt nach der Natur seiner Besonderheit in verschiedene Zweige" (*PR*, § 251). The corporations organize these branches of production.

expressions of the laws of the *System of Justice* (and, therefore, in this way the insight is acquired that the good life has been realized as *Verstandesstaat*), the representation of the absolute being (the representation of conscience) gets a new form: in the representation the transition is performed into the realm of the *Holy Spirit*. The persons become aware that the realization of the self as absolute self is only possible at the level of the community as such. The real community has to be understood as the historical realization form of the pure community. This also means that the subjective self-realization cannot be conceived of as the realization in a specific community (the corporation in Hegel's sense), but rather as the specific realization in the network of institutions that shape the *good life*. There is no reason to admit that specific institutions (namely those institutions in which the formation of lifeless nature into new use values) should have primacy. Therefore, as the families had to be reinterpreted as a network of friends, also the corporation has to be reinterpreted as a network of objective institutions.²⁹

By narrowing the network of many objective institutions to the corporation, Hegel (for his time) solves certain problems. On the one hand, the unity of the subjective identity is safeguarded and, on the other hand, the persons, as members of the corporation, have an income that enables them to realize the *good life* in their subjective way. Therefore, in other times, the question has to be answered how the coherence between the objective institutions can be conceived of and how the participation in these institutions can be combined with an income.

3 Conclusion

The three moments of *morality* that Hegel distinguishes can be understood as Hegel's version of the three ways in which Kant formulates the categorical imperative. Because the ethical institutions at the level of *family*, *civil society* and *state* are the result of the synthesis between these three moments of *morality* and the three moments of *abstract right*, ethical life can be interpreted as the institutional framework in which the ethical demands expressed in the categorical imperative are realized.

The development of ethical life, however, still has another meaning: it shows how the real individuals are educated to enable them to participate in the institutions of ethical life. This especially means that their natural drives

29 For a critical discussion with Axel Honneth's attempt to re-actualize Hegel's *civil society* see Cobben (2012, 146 ff.).

and needs are cultivated and transformed into the form of freedom. This has consequences for the meaning of property. At the level of the family, the family members have to learn that the family-property has no use-value in the Marxist sense (as a thing that because of its natural qualities can satisfy natural needs), but rather has use-value in an ethical sense: namely as the expression of the immediate form of the good life that is objectified in of the family. At the level of the *System of Needs*, the properties that are exchanged have no exchange-value in the Marxist sense (objectified abstract labor), but rather have exchange-value in an ethical sense: exchange-value has to be understood as general use-value (use-value as such) that serves the general form of the good life as it is objectified at the level of the state.

To understand the learning process of the real individual from an internal perspective the *Philosophy of Right* has to be complemented by the approach of the *Phenomenology of Spirit*. In the last work, religion is introduced as the self-consciousness of (objective) spirit. Since the ethical institutions of the *Philosophy of Right* resume in a systematical way the historical development of the spirit in the *Phenomenology of Spirit*, the forms of religion that match this last development can also be interpreted as forms that correspond to the ethical institutions. Especially the forms of *revealed religion* (Christianity) can be helpful to understand the learning process at the level of civil society.

Hegel expressively states that he develops the institutions of ethical life that are characteristic for his own time. This implies that he leaves the task to future generations to develop the institutions of ethical life that match *their* time. As well at the level of the *family* and at the level of *civil society* this leads to fundamental transformations. At the level of the *family*, our generation no longer understand the marriage as the formation of *one* person. Each individual is educated into a person and remains a person, also in the framework of the immediate relations that characterize the domain of the family. Use-values express the immediate freedom of individual persons. The family community is transformed in a multitude of friendship relations. At the level of civil society, our generation no longer accepts that labor is one-sidedly determined as wage labor (and can be replaced by automation). Labor can be represented by many activities that contribute to the realization of the general form of the good life. The corporations are transformed into many objective institutions that serve the good life.

Abbreviations of Hegel's Writings

Enz 1970. *Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1830). *Dritter Teil: Die Philosophie des Geistes*. Frankfurt a.M.: Suhrkamp.

- PR 1955. *Grundlinien der Philosophie des Rechts*. Hamburg: Felix Meiner Verlag.
- PS 1977. *Phenomenology of Spirit*. Edited by John Niemeyer. Translated by Arnold Vincent Miller. Oxford: Oxford University Press.

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Formalism and the Actuality of Freedom: on Kant and Hegel

Christian Krijnen

1 *Sittlichkeit as an Enigma*

How to conceive of the actuality of freedom? I shall argue that Kant fails to conceive of it adequately due to the formalism of his conception of the moral law (*Sittengesetz*).¹ In Kant, freedom of action can only be understood regarding its form and not regarding its content too. As a consequence, the determination of an action is, *nolens volens*, heteronomous in nature.² Hegel, by contrast, rationalizes the content while at the same time modifying the whole relationship between form and content. This results in a conception of free action as being (and remaining) with oneself in one's other. Kant's conception of 'morals' (*Sittlichkeit*), therefore, presupposes Hegel's concept of *Sittlichkeit*, certainly not for external reasons but for reasons stemming from Kant's conception of practical knowledge itself. Let me first make some introductory remarks to sketch the background of my argument.

Despite the fact that the issue of *Sittlichkeit* in Kant and Hegel has been often addressed by philosophers, it remains contested until today and the discussion, unfortunately, is pressed forward not at last by the many misunderstandings that accompany it. Hegel's criticism of Kant's formalism is commonly read as follows: Kant's moral philosophy is doomed to be an empty formalism as the principle of morals, the categorical imperative (hereinafter CI), neither allows for deducing or justifying specific, content-determined duties nor to distinguish sufficiently between morally valid and morally invalid maxims (between

1 All translations from German texts into English are mine, although I have benefited from consulting current translations.

2 In fact, the argument applies to any formal ethics, including Neo-Kantian conceptions, discourse ethics and the like, just to mention some 'idealist' versions for which Kant, despite all modifications, also functions as a paradigm. See regarding Neo-Kantianism in this respect Krijnen (2018). One of the essential motivations of Honneth's (2001; 2011) attempt to update Hegel is to overcome the formalism from which, among others, Habermas's transcendental conception also suffers.

moral validity and invalidity). Hence, CI does not supply determinations that are capable of guiding actions.

At first sight, this criticism appears to be highly implausible because the function of Kant's CI is exactly to determine the content of the moral will.³ The dominant line of defending Kant against Hegel's criticism of formalism indeed emphasizes that Hegel has misunderstood Kant's moral philosophy fundamentally. Therefore, the strategy of Kant's defenders is as simple as it is illuminating. They attempt to show both that and how CI determines the moral will, and hence that CI is certainly not merely formal or even tautological. CI essentially relates to content.

However, this defense is itself based upon a fundamental misunderstanding of Hegel's criticism. Hegel does not at all deny that according to Kant CI relates to content: he denies the legitimacy of this relatedness. What is at issue here is the sense of *Sittlichkeit* itself. Kant's relating of CI to content turns out not to be the solution but the problem.

Indeed, Hegel's criticism of the formalism of Kant's practical philosophy is the instance of a more general, in particular of a logical constellation. The criticism of formalism pertains to the profile of Kant's transcendental philosophy as such.⁴ Apart from taking the logical context of Hegel's criticism of Kant's formalism into account, contemporary Hegel scholarship also transfers the focus from the much-discussed and disputed Kantian 'examples' testing maxims by applying CI,⁵ which Hegel uses to exemplify his general criticism.⁶ The general

3 From a Kantian perspective, see on the meaning of Kant's formalism and its relationship to content, for instance, Geismann (2009), Grünwald (2004), Höffe (2012, 172 ff.; 1995, chap. 4 and 5), Oberer (1997b), O'Neill (1989; 1991), or Wagner (1980b). See also the older studies of Ebbinghaus (1986) and Schmucker (1997).

4 Recent Hegel studies emphasize this in one way or another and try to get a conceptual grip on it. Sedgwick (2012) intends a study into Hegel's criticism of Kant's theoretical philosophy, which she opens with an 'introduction' that addresses Hegel's criticism of Kant's practical philosophy. For Sedgwick (2012, 2, 7) too, Hegel's criticism is an "expression or particular application of Hegel's larger critique," as becomes clear from Hegel's "theoretical philosophy." Also Knappik (2013) construes the problem of Kant's formalism as an instance of more general constellations. Although Knappik starts his book with the problem of freedom of choice and discusses Kant's formalism in this context (Knappik 2013, chap. 2, in particular 2.6.2), he points out that his criticism requires a foundation in the sense of Hegel's *Science of Logic* (Knappik 2013, chap. 3, in particular 3.2).

5 The most famous one is probably that of the "deposit" in the *Critique of Practical Reason* (CPrR, 27).

6 In his discussion of idealist models of autonomy, Henrich (1982) clearly sees that Kant's CI cannot be the sole or highest principle of moral determination of the will. Yet, Henrich does not elaborate the structure of Hegel's model of rationality. By contrast, he focusses on Kant's examples or on matters of detail. See for a discussion of the various points of criticism that

point of Hegel's criticism is that Kant's conception of morality hinders it *volens volens* from comprehending the existence (*Dasein*) of freedom. As Hegel articulates it, due to its abstractness or formalism Kant's conception of the good misses a "principle of determination" (*Enc. GW 20*, § 508). That is to say, Kant's transcendental philosophy misses exactly the methodical moment—decisive for Hegel's speculative idealism—that sublates any externality between oppositions: the 'realization of the concept' (by moments intrinsically belonging to the concept itself: universality, particularity, and singularity). For this reason, 'form' and 'content' ('matter'), or to put it more concretely and with a view to practical reason, 'nature' ('drives and inclinations') and 'freedom' (CI) remain opposed to each other externally. In comprehending freedom, Kant stops part way. Although the incriminated formalism of morality concerns a modern conception of freedom and the good and surely is not restricted to Kant, Kant's critical philosophy does indeed represent it strikingly. The inclusion of content is the essential point.⁷ In Hegel's view, Kant's conception of freedom is developed from the start within the context of an understanding of freedom that is too limited to conceive of the actuality of freedom philosophically. Constitutive conditions of the possibility of the freedom of the will remain untold in Kant's story.

2 Hegel's Criticism of Practical Formalism

Against this background, it does not surprise that Hegel transforms Kant's conception of freedom radically. These transformations are relevant in order to understand better Hegel's criticism of the formalism of Kant's moral law or CI. For Hegel does not only reject Kant's conception of cosmological freedom as introduced in his theoretical philosophy. Also, and essential for the criticism of 'practical' formalism, Kant's practical concept of freedom is unable to express what it means to actualize, or as Kant would put it, to realize freedom.

Hegel puts forward against Kant's moral philosophy, for instance, Sedgwick (2012, 1 ff.), Allison (1990, chap. 10), Wood (1990, chap. 9).

7 In contrast to the protagonists of Hegel's concept of *Sittlichkeit* against Kant's formalism, I turn the idea of the system and with that the methodic structure of the realization of the concept as that "what is free" (*WL GW 12*, 16; *Enc. GW 20*, §160) and manifests itself in the realm of spirit qua realm of the existence of freedom into the guideline of the discussion. — Compare, for instance, Vieweg (2012, chap. 4, esp. 208 ff.) and Heyde (1987, 136 ff.). Knappik (2013, chap. 8.1) conceives of Hegel's criticism of formalism and conception of *Sittlichkeit* primarily as the problem of the 'constitution of a concrete practical self'. Hegel renews like Honneth (2001; 2011) encounter Hegel's idea of system very skeptically anyway.

At first sight, CI appears to be a powerful criterion that in no way allows the justification of any maxim. On the contrary, its formalism sorts maxims out with respect to their moral character. And without doubt, Kant's moral philosophy offers in terms of content a very rich whole of normative principles regarding anything that claims to be moral, virtuous, or right. Kant's conception of practical reason and the formalism that is typical of it does indeed integrate content. The single and overarching moral law differentiates itself into a plurality of categorical imperatives and is on top of that and via these imperatives related to the reality of humans and the human world.

At second sight however, the sketched relationship to content of the formal CI does not suffice. Hegel holds, from a Kantian perspective highly surprisingly, that Kant's CI fails to comprehend the reality or actuality of freedom sufficiently. The reason for this far-reaching esteem of Kant, as indicated, goes deeper than mere practical or spiritual relationships; yet, the perspective from which Hegel addresses the 'standpoint of morality' in his mature philosophy of spirit is the perspective of the actuality of freedom.

If we look from the perspective of the actuality of freedom at Hegel's criticism of formalism, then we can detect a general pattern to his criticism. Although Kant's formalism integrates content, the actuality of freedom remains underdetermined as the rationality of actions is solely based upon their *form*. In order to grant the form a function that orients our actions, Kant *de facto* must make additional assumptions concerning the content. Within his model of grounding knowledge and norms critically, these assumptions cannot be accounted for in a methodically justified way. As a consequence, Kant does not make good his own intentions, namely offering a critical foundation of human praxis. What seems to be Kant's glance on the one hand—formalism—turns out to be its misery on the other: it hinders the performance of one's duty.

For this reason, the strategy of contemporary Kantians of pointing to the relevance of empirical content for Kant's practical philosophy does not provide a remedy for Hegel's criticism.⁸ In Hegel's view, the basic structure of

8 Wagner (1980b; 1980a), for instance, profoundly shows that the formality of CI makes the content of morality determinable. His defense of formalism, however, does not do justice to Hegel's argument against Kant's formalism. Hegel reveals that actions in the Kantian sense are, notwithstanding the rational component of self-determination, determined by non-rational factors too, that is to say, actions in their actuality are underdetermined by the formality of CI. Wagner rightly points out that the maxims each of us has are given material for an evaluation in terms of CI, just as our actions are always also materially determined by objects, hence by a natural determinacy or non-rationality. But exactly this reference to given maxims and nature *confirms* instead of refutes Hegel's criticism. The same line of Kant defense, though with its own accentuations but nonetheless confirming instead of falsifying

Kant's philosophy of practical reason is inadequate. Kant conceives of nature and freedom in a dualistic fashion. Hegel criticizes the emptiness of CI not because CI is not related to content but because he rejects Kant's presupposition that it is possible to deduce a completely formal law from a completely pure practical reason that nonetheless possesses sufficient determinacy to guide our actions. Kant has to make use of additional content, in particular concerning our rationality and its ends. These assumptions, however, are as such contingent, and hence, by no means valid universally and necessarily.

On closer consideration, CI turns out not to be the formalism it should be according to Kant. In this context, Hegel offers the criticism, among others, that Kant determines the good merely as a 'task', or an 'ought'. In contrast, Hegel conceives of the basis for practical duties not only as the pure will but grounds them in the empirical too or, to be more precise, in the togetherness of both components. Overall, Hegel rejects Kant's 'dualistic' conception. Against this, he aims to conceive of nature and freedom, the empirical and the rational, form and content, etcetera from the start in their togetherness. And this constellation is anything but decisive only for Hegel's criticism of practical formalism; according to Hegel, Kant's theoretical philosophy is characterized by formalism too. Kant always presupposes content, his critical philosophy is never critical enough.⁹

3 Formalism as Frustration of Actualizing Freedom

Thus the question is: How does freedom (normativity, validity, etcetera) give itself *existence*? This is not to say that Hegel, in opposition to Kant, intends to relativize or historicize the claims of reason. After all, Hegel's philosophy of objective spirit is a doctrine of the existence not of any spirit but of the *free*, and hence, the rational spirit.

Hegel's criticism, is offered by Grünewald (2004) or Geismann (2009). Mere Kant interpretation of how CI relates to content does not suffice. Hegel understands the relatedness of Kant's CI to content well enough.

9 Hegel's criticism of practical formalism is addressed in his essay on 'Natural Law' (NR, 432 ff.), the chapter on morality of the *Phenomenology of Spirit* (PhG, 323 ff.), the deliberations on critical philosophy in the chapter on the attitudes of thought towards objectivity of the *Encyclopedia of Philosophical Sciences* (Enc., §§ 40 ff.) as well as in the introduction (RPh, §§ 1 ff.) into and the chapter on morality of his *Elements of the Philosophy of Right* (RPh, §§ 105 ff.).

Nevertheless, freedom conceived of as freedom of choice of an individual self does for Hegel not suffice to comprehend the “will” as an “actual will” (*RPh*, § 12), that is as a will that actualizes itself. A conception of actualizing freedom in terms of freedom of choice by a will that determines itself, conceives freedom of the will, at best, in regard to the *form* of the will. By contrast, the *content* of the will, which in first instance seems to consist merely of drives and inclinations and, hence of something given, nature, should be understood too as a “product of its freedom” (*RPh*, § 13, cf. §§ 10R, 15 incl. R). Actual freedom, the existence of freedom is only present if the content of the will can also be conceived of as a content of freedom: only when it expresses what the ‘free spirit’ that gives itself existence wants.

Hegel is certainly far from making natural drives and inclinations, which hinder our actualization of freedom, into rational givens. By contrast, he intends to achieve a concept of content that is able to conceive of the content of the will as a rational, and hence as a free content. Thus we are dealing with a problem that is, in first instance, *logical* in nature. The logical form of the content as something immediate, given, contingent, etcetera is inadequate. The content must be conceived of differently in order to be conceived of as free; to articulate it with another focus, if the existence of freedom of a free spirit should be conceivable.

Hegel captures this rationality of the content—within the setting of the philosophy of spirit—by elaborating a process in which the determination of the will is purified and hence freed. This purification of the determinacy of the will reaches from its extreme heteronomous, external, natural determination by drives to a form of self-determination that is “*self-determining universality, the will, or freedom*” (*RPh*, §§ 19–21, cit. § 21). In the course of this process, self-determination proves to be the content and purpose of a free spirit. That a free spirit comes into existence does not only require a formal type of self-determination of the spirit; it requires free content too. If, however, the content of our will is rational, then it has stripped off its immediacy, contingency, and particularity. By contrast, the content is characterized by rational determinacy. As a result, it has become the content of a truly free spirit, a spirit that truly determines itself; the content is no longer merely an impulse, inclination and so forth, in short, not merely nature. Heteronomy, determination by externalities of the spirit is typical of freedom in the sense of freedom of choice, not autonomy, self-determination, being with itself in the content.

One consequence of the conception of freedom as freedom of choice is formalism. Instead of making the actualization of freedom possible, formalism hinders it. The reason for this is that the transition from the mere formal

determinacy of normativity—from norms abstractly conceived of (like Kant's CI and the subsequent categorical imperatives of virtue and right)—to concrete actions of the free spirit, that is to say, to the actuality of freedom, does not take place in a rational and therefore necessary way but is contingent and arbitrary.¹⁰ Abstract norms are actualized contingently or arbitrarily because they can only be actualized on the basis of concrete, content-determined norms, and hence, norms that are situated or contextualized norms. Due to the externality of the content, no action is brought about as the number of morally acceptable reasons for actions (maxims) is just infinite—rather, we still do not know 'what to do' concretely.

The good conceptualized as an abstract norm (CI in the singular and plural) that is a duty for the subject and thus functions as a determinant of orientation for our action and should be actualized accordingly, misses, as Hegel puts it concisely, a "principle of determination" (*Enc.*, § 508). By implication, determination occurs "outside" the universality that is CI as the form of abstract norms, with the consequence that actualizing the good becomes "contingent"—which should not be the case (*Enc.*, §§ 509 ff.). Our concrete actions would not be actions out of freedom but actions determined by external givens (drives, inclinations, wishes, and so forth). Human action, however, is free, self-determined action. Due to Kant's focus on the moral quality of our willing, the problem of the actuality of freedom (reason) moves out of sight. The existence of 'freedom' as the existence of the 'free spirit', and hence of the 'idea' in the element of reality, has to be conceived of in a different way if it should be possible at all to achieve a Kantian moral world: a world shaped in conformity with the moral law. Kant's morality presupposes Hegel's *Sittlichkeit* as a sphere within which a Kantian type of moral law can be actualized.

10 Knappik (2013, chap. 3, 6, and 8), influenced by Hegel's *Phänomenologie des Geistes* and debates within Analytical Philosophy, interprets this as a problem of the 'constitution of the self'. However, Hegel's philosophy of spirit is as such not a philosophy of the self but of the principles of the actuality of freedom: of the spirit that knows and wants itself as free and aims to actualize its "inner" purpose, freedom, within an "externally found objectivity" (*Enc.*, §§ 483 ff.). Conditions of actualizing freedom are not identical with principles of the constitution of the self. Therefore, the problem of practical formalism is not primarily a problem of a rational transition from an abstract norm (CI) to a concrete self but to the actuality of freedom. Kant's practical philosophy (like his theoretical philosophy) is not a theory of the self either. It is a philosophy of the validity of practical objectivity (like his theoretical philosophy is a philosophy of theoretical objectivity); Kant's transcendental reflection leads to a whole of validity principles, not to a self.

4 Hegel's Logic of Freedom

This constellation is, as said above, an instance of more general logical relationships. Kant lacks what Hegel calls the realization of the concept. For this reason, Kant, in Hegel's view, offers a mere 'philosophy of reflection'; Kant's philosophy remains a dualistic system.¹¹ The One idea as the grounds for unity which determines itself and functions as the basis of a dualistic system is unaddressed, that is to say that it remains merely presupposed. Without integrating Hegel's logic, a discussion of the problem of formalism in the realm of spirit, more precisely, moral formalism, walks away from its core.¹² Because Kant conceives of reason or subjectivity as an abstract relation to itself, no transition from this universality to the particularity of specific contents is achieved. These contents, therefore, are always in one way or another presupposed as a given. Thus they are contingent, arbitrary, in short, unfree.

In contrast, the transition from the abstract, universal, undetermined to the concrete, particular, determined should happen in a rational and hence self-determined (free) way. This process, that is the realization of the concept, is the 'speculative' development of the concept: the concept develops itself from the universal to the particular and singular, and with this development it overcomes any formalism in a fundamental and also for the philosophy of reality decisive way. Hegel takes the problem of the 'original synthetic unity' (Kant) very seriously and tries to solve it in a radical and pervasive manner. As a consequence, any externality of conceptional contents, including the contingency

11 In line with the tradition, Kant divides philosophy into a theoretical and a practical branch as well as the corresponding objects into nature and freedom. Accordingly, he differentiates between theoretical knowledge and determination of the will as well as between philosophy of nature and philosophy of morals (as the "practical legislation of reason according to the concept of freedom"). Cf. *CPR*, B 868 f., 830; *CPrR*, 15; *CJ*, 167 f., 171, 174, 178 f., 416, etc. The philosophy of nature deals with "all that *is*, the philosophy of morals with that which *ought to be*" (*CPR*, B 868, cf. 830). Corresponding to this view, theoretical reason's relation to an object consists in, as Kant says, the "mere determination" of the object, that is 'theoretical knowledge' of reason. Practical reason, by contrast, is concerned with "realizing" its object (in accordance with the knowledge of it), that is 'practical knowledge' of reason. Cf. *CPrR*, 89 with *CPR*, B IX f. and *Gr*, 426. See, for instance, also *CPrR*, 15, *CPrR*, 57, *CPrR*, 9R, or *MM*, 211. See for Kant's architectonic also Krijnen (2011; 2016b).

12 The Hegel interpretation and actualization of Honneth (2001; 2011) suffers, despite numerous pointed insights, continuously from detaching the relationship between Hegel's *Philosophy of Right* and Hegel's system of philosophy including its logical foundation, meaning Hegel's conception of the speculative concept or absolute idea as developed in the *Science of Logic*, instead of incorporating it fruitfully. See for this Krijnen (2017).

and arbitrariness this entails, is liquidated. Kant's conception of rationality as such falls victim to the criticism of formalism.

More precisely, it concerns logical constellations that enable it to understand the speculative concept as that which is eminently free and, hence, makes up the foundation of spiritual freedom too. The first thing that should be noticed in this respect is that Hegel rejects the foundation of Kant's practical concept of freedom: the transcendental or cosmological concept of freedom as introduced in the Third Antinomy of the *Critique of Pure Reason*. For Hegel, this concept of freedom is not universal enough to function as an opposite concept to the concept of nature; nature and freedom do not establish a complete opposition. Rather, Kant, in accord with the rationalist metaphysics of his age upon which he draws uncritically here, anticipates already the practical concept of freedom of finite subjects. Against this, Hegel takes a more fundamental route. In his philosophy as a philosophy of the absolute idea, the *concept* in the speculative sense and in its specific logical function (that is its place in Hegel's system of logic) turns out to be that which is free: "the concept is that what is *free*" (*Enc.*, § 160), freedom the "absolute negativity of the concept as identity with itself" (*Enc.*, § 382). Only on the basis of this fundamental concept of freedom, can the existence of freedom be comprehended.¹³

5 *Hegel's Sittlichkeit as Rationalization of the Content: Overcoming the Unfreedom of Action*

If, with regard to Kant's practical formalism, practical reason is unfree concerning its content, then mere arbitrariness or contingency determines the content. Hence, the respective action becomes unfree. The universal ought to determine the content, but it determines it only with respect to its possibility not with respect to its actuality. Therefore, no actualization of the good is brought about. This constellation could be made plausible by analyzing Hegel's criticism of 'morality' in detail. Hegel shows here that Kant conceives of moral autonomy or the good as following a universality that is my own law as an intelligible entity (spirit) or self. In Kant, however, the universal and self-determination do not coincide *nolens volens* due to the formality of the universal. As a consequence, determination takes place outside the universal (CI, freedom) and the subject is revealed to be unable to grant the good the determinacy it needs

13 Hence, freedom has a logical foundation.—See for recent investigations into Hegel's concept of freedom in particular Fulda (2014), Knappik (2013), and Krijnen (2016a).

in order to accomplish an action. The moral law is only applicable by presupposing certain pre-given content-related determinations—determinations the moral law at the same time excludes, or at least does not express in its form, because it is supposed to be the formal principle of morality. The formality of CI disables actions in their actuality. Taken by itself, the moral law in the Kantian sense is only an abstract moment of human self-determination, not the principle of human self-determination. In the latter case, the moral law should also contain the conditions of its own realization in the objective realm of spirit instead of excluding them, rendering itself impossible.

How, then, does Hegel's conception, which comprehends *Sittlichkeit* as a manifestation of the concept as that which is free, provide a solution for the problem of irrationality or contingency of the content of the moral law diagnosed in Kant's approach? Are drives, inclinations, or the social embeddedness of the subject, for instance, simply exterminated by Hegel? Of course not. The point of Hegel's deliberations is not to exterminate the natural determinacy of the subject. Hegel's point is to carve out the rational character of this natural determinacy.

Such a comprehension of our natural determinacy starts in Hegel's philosophy of subjective spirit (*Enc.*, §§ 387 ff.). However, as far as the existence of freedom is concerned, hence realizing purposes in the world (and not, as in the philosophy of subjective spirit, the constitution of a subject, that is a free spirit), the content must be maximally rationalized in order to turn freedom into the principle of both form and content. To be more precise, as drives, inclinations, etcetera, they are already, in the philosophy of spirit, functionalized as determinations of freedom; objective spirit, then, concerns content-related constellations on the level of the objective existence, thus the rationality of a free existence.

Contents of a truly free spirit that brings itself into existence must be contents that are not merely given to that spirit but are its own contents, contents with which spirit identifies itself, contents in which spirit is with itself. Moreover, they must result in a concrete action for otherwise no existence of freedom would be brought about. This self-determination of spirit has to be rational: not contingent or arbitrary. Put more technically, its content is transformed. It is no longer content in the form of immediacy but content in the form of the concept, hence, necessary content. The will that actualizes freedom, then, is no longer merely "*formal*," "*abstract resolution*" (*RPh*, § 13): its content is not merely "*immediately present*" (*RPh*, § 11) but the "*content and product of its freedom*." (*RPh*, § 13) The will does not just choose from given possibilities; by contrast, it gives itself its content—it is with itself in its other: persistently free.

The logical form of the content has changed. Instead of being in the form of 'nature' it has transformed into a moment of the form of the concept ('freedom'). Hegel certainly does not conceive of the will as something that is separated from thought. Rather, the will is a type of thought—thought that “translates itself into existence, impulse to give itself existence,” (*RPh*, § 4 A; cf. *Enc.*, § 233) thought as a “thinking will” (*Enc.*, § 469). Only as a thinking will, is the will a „veracious, free will” (*RPh*, § 21 R). As such a will, it is a “manifestation” of the idea. For Hegel, manifestation is an activity of something absolute. Something truly absolute only expresses itself (*WL*, *GW* 11, 375 f., 397 f.; *Enc.*, §§ 139, 142 R, 151). Hegel's *Logic of Essence* shows in this respect that the absolute conceived of as a ‘substance’ sublates itself into the ‘concept’ (*WL*, *GW* 11, 393 ff.; *Enc.*, §§ 150 ff.); consequently, Hegel conceptualizes the further development of the *Science of Logic* and the Philosophy of Reality as manifestations of the concept. Nature and spirit are particular manifestations of the concept, and hence of that which is free. And just as the concept is a relationship between universality, particularity, and singularity, the same applies to the form of any manifestation, regardless of whether it concerns, for instance, the will, objective spirit, or *Sittlichkeit*. That Hegel via abstract right (universality) and morality (particularity) finally reaches *Sittlichkeit* (singularity) is due to his conception of speculative comprehension and the conception of concept and the realization that belongs to it. It is Hegel's way of capturing the existence of freedom, realization of validity or normativity.

Just like for Kant, for Hegel too the free will wants itself.¹⁴ However, in contrast to Kant, Hegel determines the contents of the will in conformity with the logical structure or the form of the concept in a manner that the contents reveal to be necessary elements of actualizing the will; the “drives,” which are initially the results of being immediately determined by nature, transpire to be the “rational system of the will's determination.” (*RPh*, § 19). The opposition between the moral law on the one hand and drives and inclinations that have

14 For Hegel it is “essential” that the “pure and unconditional self-determination of the will” is the “root” of duty; he holds that Kant's conception of autonomy of the will makes up the “firm foundation and point of departure” (*RPh*, § 135 R). Nevertheless, Kant depraves the standpoint of *Sittlichkeit* as he sticks to the perspective of morality instead of surpassing it towards *Sittlichkeit*; instead, Kant comes up with an “empty formalism” and a moral philosophy that merely offers a “rhetoric of duty for duty's sake.” (*RPh*, § 135 R) See also *RPh*, § 10, in which Hegel criticizes the perspective of ‘understanding’ and its conception of freedom as a ‘power’ and, hence, as a “possibility” that has to be applied to given material, an “application” that is not part of the essence of freedom; the perspective of understanding, therefore, only deals with the ‘abstract alone’ and not with the “idea and truth” of freedom (*RPh*, § 10 R). Cf. also *RPh*, § 15 R.

to be shaped by it on the other is a mere abstraction of truly free actions, that is to say of freedom in its actuality. This abstraction hinders it from comprehending actions as free actions. The constellation of an abstract system of rules (abstract right) and a subject or self that determines itself formally (morality) is insufficient for comprehending the actuality of freedom. The normative content of the situatedness or embeddedness of the subject has to be taken into account. Such normative content is present in (any) *Sittlichkeit*. The existence of freedom or the free activity of the subject requires, thus, to incorporate concrete intersubjective (social) determinations of freedom, social presuppositions of individual freedom, and to thematize them philosophically from the perspective of modernity, that is the perspective of *free* spirit. The shape of concrete sociality, the shape of *Sittlichkeit* is as such constitutive of our respective wishes, intentions, actions, and so forth. Only where there is *Sittlichkeit*, can actions take place. Hegel's philosophy of *Sittlichkeit* is a philosophy of the facticity of freedom. Truly free actions take place in a *Sittlichkeit* that itself is the 'product of freedom', hence in a free *Sittlichkeit*. The shapes of *Sittlichkeit* therefore have to be free shapes. In this fashion, Hegel determines them in his Philosophy of Objective Spirit as shapes of the existence of the free spirit.¹⁵

Abbreviations

Kant is quoted according to volume and page numbers of the German *Akademieausgabe* [AA] = *Kants Gesammelte Schriften*, 29 vols. Königlich Preußische (now Berlin-Brandenburgische) Akademie der Wissenschaften. Berlin: G. Reimer, now De Gruyter, 1902–.

CPR *Kritik der reinen Vernunft*: 1st ed., 1781 (A), Ak 4; 2nd ed., 1787 (B), AA 3.

CPrR *Kritik der praktischen Vernunft* (1788), AA 5.

Gr *Grundlegung zur Metaphysik der Sitten* (1785), AA. 4.

MM *Metaphysik der Sitten* (1797), AA. 6.

15 Note that for Hegel *any* existence of freedom is only possible within *Sittlichkeit* (this applies also to Robinson Crusoe, hermits, and the like, frequently discussed in the contemporary debate on 'collective intentionality'). In the realm of *objective* spirit, the "relation to itself" of subjective spirit has been left and a "world" is brought about in which "freedom" exists (*Enc.*, § 385). Also the products of practical spirit as subjective spirit, for Hegel, are "not yet deed and action" (*Enc.*, § 444). On the level of subjective spirit, the free spirit or will has freedom as its "*inner*" determination and purpose; this purpose, then, on the level of objective spirit, is realized in an "*eternally*" found objectivity (*Enc.*, § 483).

Hegel is quoted according to volume and page numbers of the German critical edition *Gesammelte Werke* [GW] = *Gesammelte Werke*, 21 vols. Deutsche Forschungsgemeinschaft, with the Hegel-Kommission der Rheinisch-Westfälischen Akademie der Wissenschaften and the Hegel-Archiv der Ruhr-Universität Bochum. Hamburg: Felix Meiner Verlag, 1968-.

- Enc.* *Enzyklopädie der philosophischen Wissenschaften* (1st ed.: 1817, 2nd ed.: 1827, 3d ed.: 1830), 3 vols., GW 19, 20; cited by § (3d ed.), as needed with the suffix 'R' for Remark (*Anmerkung*), or 'Z' for *Zusatz* (addition from student lecture notes).
- NR* „Über die wissenschaftlichen Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften“ (1802–3). GW 4.
- PhG* *System der Wissenschaft. Erster Theil, die Phänomenologie des Geistes.* (1807). GW 9.
- RPh* *Naturrecht und Staatswissenschaft im Grundrisse. Grundlinien der Philosophie des Rechts* (1821). GW 14.
- WL* *Wissenschaft der Logik. Erster Band. Die objective Logik* (1812). GW 11.
Wissenschaft der Logik. Zweiter Band. Die subjective Logik oder Lehre vom Begriff (1816). GW 12.
Wissenschaft der Logik. Erster Teil. Die objective Logik. Erster Band. Die Lehre vom Seyn (1832). GW 21.

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Hegel's Philosophy of the Modern Family: Fatal Families?

Tereza Matějčková

The Lord visits the iniquity of the fathers on the children
and the children's children, to the third and the fourth generation.

EXODUS 34:6–7

...

Every family has its own philosophy.

EMIL CIORAN, *On the Trouble of Being Born*

• •

1 Introduction

Man is a “son of his time.”¹ Regretful as it is that Hegel does not mention “daughters of their time” as well, through this remark he emphasizes one of the most characteristic features of his philosophy. As humans, we are fundamentally determined by our relations. Man is something that belongs to something else; he or she is *of* something, which is not accidental but a substantial trait. Thus, substantially, man belongs to a “We” prior to becoming an autonomous self.

The above fact—being human entails being in certain relations—comes to the fore in the passages Hegel devoted to the family, both in *Phenomenology* and *Outlines of the Philosophy of Right*. In both texts, the status of being a family member takes priority over being an individual. With respect to the supra-individual unit of the family, individuals are derived members and not

1 Thomas Malcom Knox renders the German word “Sohn” as “child.” “Whatever happens, every individual is a *child of his time*; so philosophy too is *its own time apprehended in thoughts*” (PR, 15). In the original, we read: „Was das Individuum betrifft, so ist ohnehin jedes ein *Sohn seiner Zeit*” (R, 26).

autonomous persons.² This point is well reflected in Hegel's early fragment, *Love*. Here, the student of theology notes that "nothing carries the root of its own being in itself" (*L*, 304).³ In the paragraphs dealing with family in the *Outlines*, this dimension of a human being, where he or she inhabits a gendered body (in fact, a plurality of gendered bodies) is again central. Furthermore, Hegel makes this "situatedness" the very foundation of freedom. In other words, one achieves no freedom *because* of being a man or *despite* being a woman, but one gains it as a woman or man among other women or men.

However, Hegel's move is beset by tensions: on the one hand, human beings essentially live through relations. On the other hand, their essence is freedom, and an important dimension of freedom is the ability to sever bonds. In his treatment of the family, where these two fundamental and conflicting insights emerge and clash, Hegel attempted to reconcile this tension; in fact, he attempted to accomplish this reconciliation almost in every work he published during his lifetime. He considered the family first in his early theological essays, prominently in *Phenomenology* and further in *Outlines* and *Encyclopaedia*—he even refers extensively to the life of our species in *Logic*.⁴ Therefore, it is not too ambitious to speak of Hegel's "philosophy of family."

Why does this topic recur? In Hegel's conception, spirit is not universal and impersonal but a potency born of concrete circumstances, inevitably situated, plural and gendered. It does not *become* flesh—it *has always been* flesh (but is not reducible to one's body). Therefore, the transition from nature to spirit is of central systematic importance. It is well known that Hegel never intended to portray a concept where spirit dominated nature. Spirit, in fact, refers to the capability of transforming nature's necessity into spirit's opportunity, the latter's essence being freedom (*Enc.*, § 382); it does not oppose nature as its external other but proves its actuality as nature's inner dimension. Correspondingly, the family, so to speak, is a "transformation channel" in which one transforms the primary immediate nature into a second ethical and spiritual nature.

The family is important in yet another sense. As I have noted, substantially, the human being is born of a "We." In *Phenomenology*, Hegel observes that the

2 In *The Fragmenting Family*, Brenda Almond interprets Hegel's family as a "mystical union" (2006, 51–53). "While [Hegel] saw the family as a natural biological unit, he also saw it as an ethical and spiritual entity imbued with purpose and direction. It is the family, with its ceremonies and observances, that enables people to transcend their own death and that of their loved ones, seeing them as stages in the life of family."

3 For an insightful article on this fragment, see Butler (2015, 90–111).

4 For the most detailed analysis of Hegel's conception of family and gender throughout his work, see Bockenheimer (2013).

consciousness enters the “spiritual daylight of the present” (*PS*, 111) once it realizes that the “I” is actually a “We” and the “We” is also an “I” (*ibid.*, 110). From this perspective, we can consider the family as the site from where (genetically) a human being learns how “I” emerges from “We” and how (moreover, in what form) the We-perspective can be retained despite the insight into the autonomy of every individual.

Speaking of the familial (thus, immediate and natural) “We,” Hegel emphasizes the complementarity of both genders from which a family emerges. Besides, he warns against one remaining stuck on this stage. This warning, however, is addressed only to male members of the familial “We.” Only men can achieve the most explicit (albeit not the most accomplished) form of freedom, a full self-consciousness for which Hegel adopts the Fichtean equation: “I = I.” The woman remains in a realm where her highest accomplishment is the realisation that her “I” never equals “I”; in other words, her self-consciousness can never fully grasp itself because she is submerged in nature, in reproduction. Essentially, the woman is an “I = Non-I.”⁵

Besides these systematic interests, Hegel obviously considered the changing face of the family as one of the many timely challenges he strove to capture in thought. With the knowledge many philosophers and social scientists note that today, there are few as controversial issues as the normative conceptions of a family, we may conclude that capturing this phenomenon in thought is undoubtedly integral in the twenty-first century.⁶ In this respect, the central question I want to ask is as follows: How does the fact that our human nature, being men or women, daughters and sons, relate to the fact that we are all equally and fundamentally spiritual and, thus, seeking freedom?

2 The Family in a Hegelian Interpretation: Timely Nucleus in the Eternal Nature

In Hegel’s lifetime, the family transformed from a site of reproduction and production into a site of mere reproduction. Thereafter, production was relegated to the newly established public sphere, an independent system of economic life that Hegel explicitly related to modernity. In a more down-to-earth vocabulary, the pre-industrial family focused on work, leaving little room for personal inclinations and motives but offering subsistence to its members

5 For an analysis of the type of self-consciousness individual men or women reach, see Irigaray (1996, 45–57) and Werner (2006).

6 See for instance Butler (2000), Chambers (2012) and Almond (2006).

throughout their lives. In contrast, the modern family is built upon feelings and reproduction rather than production. In other words, the pre-industrial family was a community of needs; in modern times, the satisfaction of many of these families moved into a realm Hegel called the “systems of needs,” the public sphere.⁷ This means, among other things, that the familial institution experienced an unprecedented loss of functions: no longer was it a place of production, no longer it did bestow social status, and most of its educative function moved into the realm of the emerging society and the educational institutions set up by the state.

From this perspective, the modern family arises amidst the collapse of the traditional one. In fact, it comes into being by a severing of bonds both with the extended family and with the thus-far cultivated alliance to one's soil. This concept of extended family was the dominating picture of the family in philosophical literature well into Hegel's time.⁸ Gradually, it contracted into a concentrated nucleus of affective and physical bonds. Hegel repeatedly emphasized this severance, that is so closely tied to the awakening of individuality and subjective freedom, and he welcomed it without moralising. In fact, he presented himself as the philosopher of the nuclear family, a unit that we today call traditional, while in Hegel's time it was considered as partly subversive of the traditional order, partly immoral for its disregard of the extended family, soil and traditional hierarchies.⁹

Against such beliefs, Hegel based marriage and family exclusively on the consent by both parties irrespective of their class and status, explicitly claiming that the modern family must be founded on equality and mutual recognition, instead of power relations. In this sense, the modern family is a symptom of the many crises of authority essentially linked to modernity; not only does the modern world-view challenge God, the past, or the monarch, but sexual domination also loses its authority.¹⁰ Here, Hegel was well ahead of his time and in accordance with the revolutionary proclamations of the French assembly, codified as the Code Civil in 1804, which were adopted in those parts of

7 See *PR*, § 188, 186. “The mediation of need and the satisfaction of the individual through his work and through the work and satisfaction of the needs of all others—the *system of needs*.” An informative treatment of the pre-industrial, industrial and 20th-to-21st century family is offered by Beck and Beck-Gernsheim (2002, 86–100).

8 For a comparison of Hegel's conception of the modern “bourgeois family” with the pre-modern family, see Blasche (2004, 183–207).

9 Eva Illouz aptly calls Hegel “one of the first advocate of emotional freedom” (2018, 219) and draws attention to the fact that even after Hegel's death in 1831, the right to choose one's spouse on the basis of only an emotion was hotly disputed.

10 For an enlightening analysis of this crisis of authority, see Kottman (2017, 161–171).

Germany that were conquered by Napoleon. Under this code, social hierarchies were deemed irrelevant to one's choice of spouse. Thereafter, the foundation of the family would stand and fall with the free will of consenting adults.¹¹

Needless to say, Hegel was attentive to the dangers stemming from a modernity that weakened previous bonds and alliances without formulating a new legal context for a modern society based on the insight that subjective freedom must be universally accepted. He emphasized legal certification, binding forces and the permanence of marriage. Thus, Hegel strengthened dimensions that were, to his dismay, questioned by romantics and that are challenged by today's liberal public. In this regard, another aspect is often subject to discussions. Prominently, Hegel seemed to ignore women's demand for emancipation even though in his time, he must have witnessed the efforts of many women to enter the public sphere. Choosing to ignore these trends, he suggested restricting women's education to the requisite of a future wife and mother. Critics reproach such a stance and Seyla Benhabib goes as far as to call Hegel a "gravedigger of women's emancipation" (1996, 41).¹²

Repeatedly, scholars have excused Hegel's views on women using the most obvious tactic—he was a thinker in the nineteenth century.¹³ Others doubt whether this tactic can be successful; after all, Hegel lived in a time of revolution and had encountered women entering the public sphere. As much as I agree that prevailing views on gender in nineteenth century cannot be the only argument through which to understand Hegel's conception, it nonetheless seems facile not to consider the contemporaneous time, especially in the context of Hegel's philosophy. If his philosophy comprised the "*thought of the world*" (PR, 16), Hegel *might* have conceptualized the then-frequent and mainstream views on women and men without necessarily underwriting them (though he most probably was a proponent of such views).¹⁴ True to his

11 For a reconstruction of Hegel's concept of family on the background of Napoleon's Code, see Benhabib (1996, 32–34).

12 Despite the legitimate criticism of Hegel's conception of gender roles, Hegel proved influential for feminist thinkers in many respects. This point is well illustrated by Simone de Beauvoir, who creatively appropriated Hegel's dialectics of lordship and bondage to the problem of gender inequality in *Le Deuxième Sexe* (1949). Some of contemporary thinkers on gender see themselves as part of a Hegelian tradition, probably the most notable example being Judith Butler.

13 To a certain extent, Walter Jaeschke (2010, 386) underwrites this strategy.

14 This Aristotelian conception of a passive woman and active man gained a pseudo-scientific backup in the 17th century: In the presumably "cold" body of the woman, the capacities of the soul fail to develop well. In this context, see Kuster (2015, 211–221). That this views on passive women and active men are difficult to extricate even from a scientific discourse is attested by Talcott Parsons, who bases his sociology of family precisely

conviction that the philosopher's job is neither to instruct the world on what it should look like nor attempt to change his age, he accepted the then-current, "actual" views and considered them as rational, in accordance with his motto: "what is actual is rational" (*PR*, 14). However, since something *actually* given and experienced as real does not mean that it is rational *tout court*, one needs to reflect on the other part of the speculative *Doppelsatz*: "What is rational is actual" (*ibid.*).¹⁵ Having accepted the *actually* given as a starting point, even as a transcendental condition, now we need to proceed to the second part of Hegel's motto, which might be formulated as a question: What of the *actual-ly* given is rational? With this second glance, Hegel transcended the frequent contemporaneous views by their own dynamic, without putting forward a revolutionary concept of gender roles.

We may adopt the same perspective in evaluating Hegel's work itself—first accept his perspective as a given, and then delve into the rational dynamics from which it is born and through which it may even be transcended. In this context, it is important to note that Hegel fully embraced the fact that the family is not a structure outside history. On the contrary, as a spiritual entity, it has a history and hence undergoes transformations, made clear by Hegel's analyses of the Oriental, Greek, Roman and other Christian families. Notably, Hegel contrasted *all* these families with the *modern* family, which was exclusively based on freedom and self-direction.

The fact that the family transforms in time does not mean that it is merely a social construct. From pro-family campaigners who tend to stress on the biological basis of the family, we often hear that a family consists of a father, a mother and a child. Hegel did not challenge this point, and yet he never derived the concept of the family from physical traits or its exclusive trope of reproduction, since the modern family no longer had natural blood-relations as its basis. Instead, "the new family is based on ethical love" (*PR*, § 172, 171) and, thus, "marriage is not to be shown as something natural, it is ethical" (*VR*, 78). The family was seen as an ethical institution educating not only the child into becoming a free person but the parents as well. Hence, the familial institution

on these Hegelian presuppositions. In this regard, it is fair to add that he did notice a transformation of the family during the 60s and even urged women to actively enter the workforce in order to not fall behind in the midst of social transformations.

- 15 In this interpretation, I do not ignore Hegel's reply to those criticizing him for purportedly proclaiming that everything is rational. I respect the fact that Hegel's sentence is speculative, and thus the "actuality" needs to be mediated by "rationality" and *vice versa*. Without reducing the actual to the given, at the same time I stress that for Hegel, the actual must be, in some way, present in the empirical. Otherwise, it would be reduced to the "empty beyond."

was assessed with regard to the quality and extent of freedom it offered. Thus, its necessity and non-arbitrariness lay in being a unit that, throughout history, strived to materialise freedom.

There is another perspective which showed that the family is not a mere social construct. As it is rooted in nature, it escapes our reflexive powers and also exerts considerable power over us. Hegel called this the family's "godly" or "holy" dimension.¹⁶ By this, he did not mean that a family is sent from and willed by God; instead, it was conceived as a thoroughly worldly affair. However, its worldliness transcended human power and self-understanding. The family and its structures continue to live in our minds despite our attempts to free ourselves from its grip, as Greek tragedies illustrate so well. In fact, Hegel's fascination with them, among other things, might have stemmed precisely from their ability to portray our vulnerability arising from the fact that we are constituted by relations, both conscious and unconscious. To put it bluntly, as daughters and sons we do not exert full control over ourselves. At times, this might be a positive feature and we might instinctively or unconsciously do the right thing, but often it is a negative aspect and we find ourselves gripped by irresistible emotions and physical power.

Thereby, we encounter why the institution of the family is beset by tension, not only as presented in Hegel's work but as a unit that is essentially ambiguous. Hegel called the family a spiritual entity, albeit in a natural form. Due to its natural and instinctual roots, no member of a family is able to make it an object of consciousness. Therefore, it is not possible to reduce the family to a structure of mutual recognition. Here, a different form of relation to the other—desire and love (easily transformable into hate)—plays a decisive role. In this respect, Hegel opposed Kant's conception of the marriage as a "civil" contract; "marriage is thus degraded to the level of reciprocal use governed by contract" (*PR*, § 161, 164).

As Hegel remarked, love is a tremendous contradiction (*PR*, § 158, 162). These specific types of "contradictions" delimit the spiritual realm, starting

16 Most prominently, Hegel treats the family as an explicitly godly entity in the context of his interpretation of Antigone in the *Phenomenology of Spirit* (263–289). Here, he links the dimensions of unconsciousness and godliness. "The Family, as the unconscious, still inner Notion [of the ethical order], stands opposed to its actual, self-conscious existence; [...] the Penates stand opposed to the universal Spirit" (268). Of course, the modern family is rendered so precisely by limiting the unconscious aspect of the family and basing it on subjective freedom. Despite this, even the modern family is not fully spiritual but a "mixture of a substantial relationship with natural contingency and inner arbitrariness." (*PR*, § 180, 178). Among other things, this means that its dynamic remains partly unconscious. Therefore, Hegel attributes a "religious character" (*PR*, 166) even to the modern family.

from the fact that freedom entails “being with oneself in the other.” In the political realm, in case these contradictions are not well-stabilized, they result in political crises; in the realm of the family, they result in tragedies, even in prosaic times.

3 Love as Felt Freedom?

In Hegel's work, love almost gains the status of a philosophical axiom.¹⁷ Hegel never considered love an abstract principle and refused the concept of a universal love, be it for mankind, nation, or God. Love is a relation between two equal, finite, living beings. Hegel makes this emphasis on finitude and concreteness an integral systematic part of his philosophy. Rationality and generality do not stand above the concrete and, thus, there exist no extra-empirical spiritual realms. Whatever is valuable, even at the highest level, appears in the sensual, the empirical and the finite.

More importantly, Hegel attributed a logical structure to this early concept of love, which he would later call spiritual: in loving another human being, man is “with himself in the other.” Not incidentally, this is the structure of spirit and freedom. Thus, love is “freedom in the form of feeling,”¹⁸ a down-to-earth feeling which housed in a body amid the emotions of vulnerability and shame (*L* 306). Therefore, it is obvious that Hegel did not have the concept of Platonic *eros* or the *Christian* agape in mind. Instead, he spoke of a thoroughly modern emotion.¹⁹

However, speaking of emotion is not convincing either. Hegel elucidated the extent to which the social structure needed transformation to make this strange emotion a “mainstream” option. Human beings would first need to be considered equal, and second, to be considered free, irrespective of their social status. Third, their individuality would need to be valued. Thus, in this form love is more a social structure than an emotion, a type of “communication”²⁰

17 For a systematic reconstruction of Hegel's conception of love see Rózsa (2018, 548–572).

18 See the passage *in extenso*. “Freedom in this sense, however, we already possess in the form of feeling—in friendship and love, for instance. Here we are not inherently one-sided; we restrict ourselves gladly in relating ourselves to another, but in this restriction know ourselves as ourselves. In this determinacy a human being should not feel determined; on the contrary, by treating the other as other he first arrives at the feeling of his own selfhood” (*PR*, § 7, 33).

19 Klaus Vieweg too stresses that this concept of love based on self-determination is the “signature of modernity” (Vieweg 2012, 256).

20 Here, I rely on Luhmann's conception of love as a medium of communication (Luhmann 2010, 27). “Despite the medieval roots of ‘romantic love’, its *institutionalization as a*

that evolves once human beings, as members of a society, are capable of viewing themselves as equal “infinite personalities in themselves.” In fact, this insight became the axis of the modern world (*PR* 13).

Once individuality was so highly valued, the familial institution could not be based on what Hegel called “abstract rights.” As a subject of abstract rights, a human being is defined by *general* traits, which is why the law disregards his or her individuality. In fact, as a person, man is interchangeable. Being a member of a modern family, one counts, on the contrary, with regard to one’s subjectivity and individuality. “In love, I am not conceived of as self-consciousness, as a person, but as a natural I, thus in respect to my entire particularity. In love, we encounter such a randomness in so far as love comprises the whole of my subjectivity as something particular” (*VR*, 421).²¹

Exactly because of this emphasis on concreteness, Hegel considered the familial site the first realm of freedom. Human beings are not free insofar as they are members of a species and belong exclusively to the realm of generality, which in this context means that they share some human traits which make them predictable. However, they are only concrete in relating their individuality to generality. There is no freedom and no history in the realm of nature (*PS*, 178), both freedom and history arising only once subjectivity emerges. In the modern family, the emphasis on the singularity of its members transforms into an ethical principle: man shall respect the differences of others, and since everyone is different and (thus) society is defined by plurality, man can act.²²

Due to these social transformations, love gained a new meaning. No longer did it remain a passion, either downright pathological or one that needed to be controlled through early marriage or channelled outside of society (traditionally towards God), or an emotion in need of translation into artistic achievements (Luhmann 2010, 24). In modernity, it gained a social function. No longer

foundation for marriage is a decidedly modern achievement, attributable in its initial programmatic postulations to the sentimentalism of the eighteenth century, being a component here of the bourgeois critique of aristocratic immorality. That is the first time that this concept of love is removed from the vagaries of purely individual experience and becomes fixed in social expectations. Passionate loving becomes an expectation posited as a goal of learning and upbringing, a social form which permits only limited modifications for reasons of adequate communication.”

21 In the original, the passage reads as follows: “Ich bin in der Liebe nicht gemeint als Selbstbewußtsein, als rechtliche Person, sondern als natürliches Ich, d.h. nach meiner ganzen Besonderheit. Die Liebe hat daher diese Zufälligkeit, dass darin meine ganze Subjektivität als besondere enthalten ist.”

22 In *Phenomenology of Spirit* (178), Hegel contrasts the universality of an organism that cannot act exactly because it is subjected to universal laws, while man can step out of the same and make a difference, thus initiating something new.

a fleeting feeling, it transformed into the foundation of one of the most central institutions of Western society. Of course, we do not mean to claim that there was a time when love did not exist. While it has been present throughout history, it is only now that love has been considered a specific type of *emotional* communication that forms the very substance of modern *ethical* life. In this respect, Hegel starkly opposed the romantic idea that love *as a feeling* is the *only* basis of marriage. "Marriage, therefore, is to be more precisely characterized as rightfully ethical [rechtlich sittliche] love, and this eliminates from marriage the transient, fickle, and purely subjective aspects of love" (*PR*, 164, cf. Vieweg 2012, 255–260).

In disregarding external criteria such as status, lineage, or wealth, love became self-reflexive; it is no coincidence that the modern conception of the self has evolved in the same manner. In the tradition of German Idealism, no longer was the self defined by something external to it, be it the ability to relate to God, the status bestowed by social hierarchy, philosophy and theology, the ability to think universally, or a general external law. Instead, the self became real and human by one's ability to constitute herself or himself transparently, to be what Fichte called a *Thathandlung*: "The self's own positing of itself is thus its own pure activity" (Fichte 1982, 97).

Significantly, this active self-reflexivity characterises modern love as well. We experience ourselves as being in love not by paying attention to outward status of our loved ones but in observing how we are transformed by love, and thus by self-observation. Love transforms into an autonomous dynamic, freed from the external realm: just as the modern self is the Fichtean "I = I," modern love bends towards itself. It is in fact, as key sociologist as Anthony Giddens claims, akin to the pure I, a "pure relation" (Giddens 1992, 58). Not only do we find ourselves in the grips of this pure relation, we actually love this relation—we love love itself.²³

4 The Freedom to Be Born, the Freedom to Die

Hegel applied such a self-reflexivity to the family, which was exactly what made his conception modern. However, one must emphasise that it is not freedom

23 Nietzsche formulates a related insight: "It is true: we love life not because we are accustomed to life but because we are accustomed to love" (2006, 28). Love, that Nietzsche treats in these passages as a specific perspective on life, transforms how we encounter life itself. If we love, we encounter life as something beautiful; equally, if we love knowing, we experience a form of satisfaction even if we comprehend something appalling.

that is the essence of the family. As mentioned earlier, it is a transformative path from natural determination to freedom. Man's fundamental determinism lies in the fact that he is given birth to. From the perspective of the child, this is of course an eminently passive event. However, Hegel changed the perspective and translated the event of having a child into the principle sign of human freedom.

In accomplishing this, Hegel again refused external rationalisations for begetting children. Man does not (and shall not) beget children for God's or the nation's sake. He shall not treat his child as insurance for old age (such insurance is "outsourced" to the public sphere).²⁴ There is only one possible ethical reason for having children: the parent's freedom. For the child, the parents' love is objectified—here, love has the same structure as freedom. Indeed, love is freedom because "here the individual has transcended his self-enclosed personality and finds himself and his consciousness of himself in a whole" (*PR*, 52).

Significantly, Hegel described this objectification as a quasi-self-reflective act: "In the child, a mother loves its father and he its mother" (*Ibid.*, § 173). The parents witness their love ("they love their love"), they become one with the other (manifested in the child) and experience their freedom. This freedom is lived exclusively in the "We." From the genetic onset of freedom, Hegel did not understand it as a general principle of being able to exercise distance from whatever one's consciousness encounters. He recognized it as a type of relation. Thus, in the family, members experience these relations to others and consider them as the basis of their own autonomy. Therefore, a child does not limit his or her parents' freedom but creates a form of substantial freedom instead.

In his treatment of the family, Hegel repeatedly spoke of the dangers linked to all self-reflective phenomena and structures: they face the danger of losing an adequate and vivid relation to the external world and sinking into irrelevance due to such loss. This is well exemplified by the status of religion in modern society. In the process of secularisation, once religion loses many of its external functions and no longer remains the "infrastructure" of society, it becomes an institution of choice. Similarly, once the family turns into a place of affection and no longer remains vital to the individual, it can be ignored. Later, it takes on manifold forms (just as in the case of religion). However, besides this loss of importance and gain in plurality, there are downright dangers specific to self-reflexive structures. The link between self-reflexivity, external

24 From this perspective, the attempts of some of Western politicians to support reproduction due to a shrinking Western population would equally count as unethical.

closure and the danger that such a phenomenon may end, possibly badly, was a recurring topic in Hegel's work. Principally, it is the self-reflexive "I" that faces severe dangers. It is constantly threatened by scepticism, irony, and nihilism. Additionally, once phenomena become self-reflexive, they are prone to either decomposing or becoming considerably fragile.

As often noted, this does not mean that phenomena such as history, art, or religion cease to exist once they turn towards themselves. Instead, their status transforms profoundly; they move away from being a general to becoming a highly specialised phenomenon. Going forward, no one would be obliged to participate in religious life; once art ceases to be an integral part of social or religious life, one could ignore it. People could even avoid the self-reflexive love market, and one need not become a parent. Thus, the self-reflexivity that Hegel observed at several levels of society and human agency—a dynamic he explicitly linked to the Enlightenment—does not exhaust itself in being a freedom experienced within the individual realms. It is not only lovers who are more autonomous in having the freedom to disregard external criteria; this transformation goes hand-in-hand with a freedom *from* the given phenomenon, with the possibility of choosing whether to participate in a given self-reflexive social structure.

Obviously, as a structure rooted in nature, the family would never be simply a matter of choice. Everyone is, involuntarily, born into a concrete familial setting. Moreover, man is not only determined in terms of birth; some form of determination persists throughout his life. Hegel illustrated this "fatalism" of family life by looking at Greek tragedies. It is telling that he repeatedly came back specifically to those tragedies that thematised family relations—we repeatedly meet Antigone, Oedipus, or Orestes. That the human spirit is drawn towards tragedies to such an extent, in both living and writing them as well as being moved by them throughout ages (even in prosaic times), attests to the fact that there is an essential link between tragedy and spirituality. What is this essential link? It is the fact that spirit is relational and that tragedies, most fundamentally, enact and portray a rupture; in fact, they display the most archetypical ruptures in human relations and, thus, they comprise the other side, so to speak, of the spirit living through relations. Tragedy exposes the negative side of the spirit.²⁵

25 This is nicely put forth by Frédéric Worms (2019) in his treatise *Penser à quelqu'un*, particularly in his treatment of tragedies. "On est parfois (trop rarement) surpris que, dans la tragédie, et pour qu'il ait tragédie, il faut qu'il y ait non seulement malheur, mais un malheur bien précis : une rupture, par l'un de ses termes envers l'autre, d'une des relations les plus intimes entre les êtres, qu'il s'agisse de la fraternité (et donc du fratricide), de la parenté (parricide, matricide ou infanticide), ou de l'amitié (la trahison en général). Il ne

However, it is most important to emphasise that in modernity, the familial institution lost some of the fatality linked to the familial ties in tragedies. What changed? That familial ties were fatal (to this extent) was linked to the fact that family was the most essential aspect of human beings. Thus, the individual was dominated by a power exceeding her individuality. In this regard, the irresistible force of ancient families stemmed from the fact that they were ancient, not modern. For a modern family, Hegel demanded a loosening of familial ties. Despite this difference, so vividly emphasised, the family exercises a firm natural grip even over our modern consciousness, which is why the familial site can only host authentic tragedies, even in a prosaic modernity.

Why is this the case? The spirit is *of* nature; it is not independent of nature. Therefore, all attempts to live with absolute spiritual freedom are bound to fail. In this context, Hegel spoke of the “divine nature” of the family, asserting that family epitomises a force that maintains control over our lives, despite our individual will. Such a “divinity” is substantial for any society. Here, a continuity that is more powerful than the continuity of spirit reigns.

This persistence, in its divinity, is disturbing. Often, despite one’s attempt to avoid certain familial traits or events haunting one’s family, one would involuntarily reproduce them. In addition, this would often occur in the form of pathologies. Emil Cioran beautifully captured this irresistible continuity in one of his aphorisms. After noting that “every family has its own philosophy,” he elaborated on the philosophy that he himself had inherited from his mother:

[M]y mother ended the last note she ever sent me with this testamentary sentence: “Whatever people try to do, they’ll regret it sooner or later.” Nor can I even boast of having acquired this vice of regret by my own setbacks. It precedes me, it participates in the patrimony of my tribe. What a legacy, such unfitness for illusion (2012, 68)!²⁶

This aspect of divinity as “mystical” continuity, which is natural for nature but artificial for the spirit, came to the foreground as Hegel treated the family as a site of death (*PS*, 270). We are not only born into families but also die as members of a family. Furthermore, often one’s family takes upon itself the duty to care for the dead body of a deceased member. In Hegel’s understanding, it is

peut pourtant pas en être autrement : car c’est dans la rupture de ces relations que réside le modèle de la violence, ou plutôt de ce que nous appellerons de manière plus précise la *violation* entre les hommes” (104–105).

26 In fact, this wisdom of Cioran’s family bears resemblance to Antigone’s insight: “Because we suffer, we acknowledge we have erred,” cited in Hegel’s *Phenomenology* (284).

the duty of family members to accompany a member's dead body consciously, in order to extract it from pure nature. In this sense, the familial site operates at the very limit of consciousness and unconsciousness, life and death, spirit and nature. Here, we again identify a point imperative to Hegel: spirituality is not a freedom *from* nature but a freedom *in* nature.

As families deal with the most inescapable aspects of human life—natality and mortality—they are invested in a type of stability and passivity that is foreign to the volatility of the spirit. At the same time, the passages of Antigone in *Phenomenology*, as recalled in *Outlines*, show that it is in the negotiations with their own determination that men and women prove to be human. Man is not defined by his strength to subdue the outer world, as suggested by the Sophoclean eulogy on man's rationality and wit.²⁷ It is telling that Hegel ignored this praise of human innovation and emphasised man's ability to actively take on his natural weaknesses and translate them into activities, thus "interrupting the work of Nature" (*PS*, 271). The dead are made part of the community by the accompanying consciousness of the living. Thereby, man transforms something that *happened* to their dead into something that is *done* through consciousness.²⁸

Hegel translated these two basic insights into his conception of spirituality: human beings are defined by their nativity and by their ability to care for the dead. This is the reason why spirit, as opposed to pure nature, has a history. First, nativity, generally associated with the human ability to start anew and move the hitherto unmoved, second, finitude, and third, history, are the constitutive elements of the spirit. In the form of family as a site of the immediate spirit, these three elements take on the form of birth, maturation and death.

27 See the eulogy on man: "At many things—wonders, terrors—we feel awe, but at nothing more than at man. This being sails the gray-white sea running before winter storm-winds, he scuds beneath high waves surging over him on each side; and Gaia, the Earth, Forever undestroyed and unwearying, highest of all the gods, he wears away, year after year as his plows cross ceaselessly back and forth, turning her soil with the offspring of horses. The clans of the birds, antistrophe a With minds light as air, and tribes of beasts of the wilderness, and water-dwelling sea creatures—all these he catches, in the close-woven nets he throws around them, and he carries them off, this man, most cunning of all" (Sophocles 2003, 68–70).

28 Hegel writes: "This universality which the individual *as such* attains is *pure being, death*; it is a state which has been reached *immediately*, in the *course of Nature*, not the result of an action *consciously done*. The duty of the member of a Family is on that account to add this aspect, in order that the individual's ultimate being, too, shall not belong solely to Nature and remain something irrational, but shall be something *done*, and the right of consciousness be asserted in it" (*PS*, 270).

5 Ironical Families

Focusing on Antigone in *Phenomenology*, Hegel relied on a binary opposition of the male and female and associated this opposition with specific ethical duties. As she is essentially passive, the woman cares for family and reproduction; as he is essentially active, man is a political agent entering the realm of the public. Many readers have shown that this distribution of passivity and activity ironically turns against Hegel himself. If Hegel wanted to illustrate women as essentially passive, Antigone was the worst possible choice. Her vocation was a revolt against passivity and, most importantly, even against familial duties—in sacrificing her life for the burial of her brother, she fulfilled the vocation of her dialectical name. Literally, “Anti-gone” refers to one who turns against her genus, who revolts against her present generation. Antigone sacrificed her most essential vocation of bearing children for her dead brother. In her, the family ends, albeit not in an execution as Creon planned, but in suicide, since Antigone managed to turn an execution into an autonomous act, proving her ability to start anew even in the thralls of death, hanging herself on her scarf after being buried alive. In this sense, it is difficult to think of a better illustration of Hegel’s definition of spirit (in his foreword to *Phenomenology*) than Antigone, who managed to transform an execution into an autonomous act: “But the life of Spirit is not the life that shrinks from death and keeps itself untouched by devastation, but rather the life that endures it and maintains itself in it” (*PS*, 19).

In the context of his interpretation of Antigone, Hegel called the woman the “everlasting irony of the community.”²⁹ This gnomic expression might be interpreted in two directions. Women expose to the public something that should remain closed; they disturb the public sphere by confronting it with its dark, partly unconscious domestic background, ironically turning the world upside down. According to an alternative reading, a society may be deemed ironical if it denies women the right to be free, despite the fact that they, by Hegel’s own logic, represent nature and constitute the foundations of society as well—through them, mankind emerges. It is well known that Hegel criticized Greek society for offering only a limited form of freedom.³⁰ This “ironical” treatment

29 “Womankind—the everlasting irony [in the life] of the community—changes by intrigue the universal end of the government into a private end, transforms its universal activity into a work of some particular individual, and perverts the universal property of the state into a possession and ornament for the Family” (*PS*, 288).

30 “Thus not only did the Greeks have slaves, upon whom their life and the continued existence of their beautiful freedom depended; but also their freedom itself was on the one hand only a contingent, transient, incomplete flowering of limited scope, and on the

of women in a patriarchal society turned women into men's foes, while they eventually managed to destroy an entire "ethical shape of the Spirit" (*PS*, 289).

How do they accomplish this work of destruction in the absence of political power and weapons? In Hegel's narrative, they are the accomplices of the divine realm and know very well how to apply their influence in destabilising male power. In this interpretation, the "beautiful Greek world" perishes due to the inequality of gender-roles. This is, of course, an eccentric interpretation that is historically incorrect. However, it is interesting with respect to Hegel's interpretation of the modern family. In *Phenomenology*, he did not denounce this unequal social and gender constellation, nor did he blame women for behaving in hostile ways. Instead, he quite neutrally observed that this binary, opposed set-up, in which only one party in the equation is considered free, is evidently unstable.

Despite this insight in *Phenomenology*, in *Outlines* Hegel set up identical gender relations; the woman was responsible for the household, while the man would enter the public sphere. Hegel demanded legal equality for both genders, while ethically the woman was secluded in the private sphere. This constellation is anything but satisfying, either from the perspective of today's society or as per Hegel's own philosophy. Hegel made it unmistakably clear that man reaches maturity only once he is able to participate in the public and political sphere. Lacking these opportunities, man fails to develop into what Hegel calls the "infinite personality." From Hegel's philosophy, we must inevitably conclude that this is the case for both men and women, since Hegel never doubts that women are as spiritual as men. However, in this case, a woman naturally strives for freedom just as a man does, which can be achieved only when she has the opportunity to be part of all the three segments of the modern state—the family, the public sphere, and the state. Despite being called a "gravedigger of women's emancipation," as noted earlier, it is beyond doubt that the evolution of human society towards political and ethical equality agrees with Hegel's own philosophy.

However, it is apparent that Hegel had mixed feelings towards the institution of the family. Since it is only the *ground* of freedom, it must not have exclusive control over an individual. It has a natural stability, which partly perpetuates freedom and partly endangers it. Therefore, Hegel repeatedly treated the family as an institution that is a being directed "to an end." Peculiarly, in the context of the family, by "end" Hegel meant a dissolution of the family for the

other hand a harsh servitude [imposed] on [some] human beings, on [their] humanity" (*WH*, 88).

sake of freedom; families are meant to perish, once the children are raised and move out of their homes.³¹

This constitutes a paradox: despite its unique “natural” stability, it perishes while the other two realms of the modern state prevail. In fact, even from a modern perspective, it is most probable that familial structures will outlive any contemporary state. In that case, what do we mean by the stability of the family and its fragility? As a general structure, it is naturally stable; in its individual embodiments, it is enormously fragile. However, according to Hegel, it was meant to be fragile. In being natural, families die like people, often long before the deaths of their members. Despite this fact, they persist as a part of the eternal cycle of reproduction.

6 Hegel's Thought on Families Today

As a thinker of the nineteenth century, Hegel did not offer any concrete insights on how to deal with the challenges we face in the twenty-first century. Even then, there are lessons to be learnt from his treatment of the family. Similar to the present times, Hegel lived in a time that witnessed profound transformations in familial lives. We learn from any of his philosophical writings that once a subject awakens, he or she wields power over society which undergoes an essential transformation. Hence, freedom cannot be stopped, only suppressed. Applying this idea to today's familial forms, we can delineate a truism: women's emancipation has had a tremendous impact on the stability or instability of modern families. Just as Hegel sought, in his time, an awakening of subjective freedom and a new, albeit not revolutionary, model of family life, so do we face the challenge to accommodate new types of families today. In his time, Hegel did not look for previous traditional models. Instead, he took the destabilisation of the family as a starting point. It is important that Hegel never joined the camp of doomsayers; in stark contrast, the awakening of the subjective freedom and the accompanying social changes enabled an unprecedented propagation of self-determination and education, which Hegel never failed to praise. Furthermore, his insight into the link between the rise of the nuclear family and changes in social and economic structures enabled him to abstain from moralising, something he disdained not only with regard to the

31 “The right which the individual enjoys thanks to the unity of the family, and which is in the first place simply the individual's life within this unity, takes on the *form of right* (as the abstract moment of determinate individuality) only when the family begins to dissolve” (PR, 162).

family. The transformations he witnessed were primarily a social change and not individual faults.

Today, familial life has been deeply transformed by yet another phenomenon that is equally linked to a new type of freedom. The mutual recognition between spouses, which Hegel considered as the foundation of the modern family, now forms the foundation of the parent-child relation as well. Here, we again witness a movement away from hierarchy towards democratic relations, where children have now become part of key decisions, from where they were hitherto excluded.³² This rising autonomy of the individual members of the family unavoidably undermines its stability, which had been conceived as one unit made up of its constituent members. In fact, if the essence of spirit is freedom (autonomy being an important aspect of such freedom), then this very spirit is inevitably in contradiction with the family.

Despite this fact, as I have shown earlier, the family has a strong card to play, as it were. It has nature on its side, which makes it "eternal," no matter how profoundly its forms change. Its resilience makes itself felt even today, at a time often considered as an age marked by the decline of the family.³³ Individual autonomy is not the only phenomenon on the rise: the rising life expectancy has profoundly transformed the face of the contemporary familial structure. Some sociologists have noted the possible re-institution of an extended family, albeit on a new foundation. In this regard, one must note that families do not operate on the foundation of a shared "oikos" but on blood relations permeated by mutual recognition and misrecognition. At times, even up to four generations of one family live simultaneously. Along with this unprecedented rise of familial "density," which is a result of prolonged adolescence and old age, another indicator is on the rise: paradoxically, people tend to spend more time in their families or with family members today than they did during the nineteenth century. This, in fact, confirms Hegel's own conception of his philosophy of "one's age captured in thought." While he considered family time as relatively restricted to a certain period of one's life, contemporary familial ties appear to be pervasive. Twisting a famous quotation attributed to Hegel, we may remark that the children's birth is not their parents' death.³⁴

32 Honneth (2013, 296) speaks, in this regard, of an epochal transformation in educational practices.

33 Even if this was the case, not all of those reflecting on the destiny of the family consider it something to be feared. Anthony Giddens' remark is representative of those voices: "The persistence of the traditional family—or aspects of it—in many parts of the world is more worrisome than its decline" (Giddens 2002, 65).

34 Hegel remarks: "Die Geburt der Kinder ist der Tod der Eltern" (*JS*, 214).

Furthermore, this notion does not only apply to families. Eva Illouz has shown, in *Why Love Hurts. A Sociological Analysis* (2012), that as modern relationships become less stable, people tend to experience a series of relationships in the course of their lives. Since this is linked to a considerable amount of hope, stress and disappointment, culturally love and its by-products have risen to an unprecedented prominence. Not only has the “familial density” increased, but the number of past relationships has increased as well. Paradoxically, with regard to divorce, families do not shrink but grow, since it is very likely that the divorcees would find new partners (possibly while caring for children from past relationships).

Extrapolating this perspective, we do not live in a time after the family but one that is submerged in familial ties and intimate relations that are either latent, waiting to grow in importance, or are currently strong (love or hate) but about to weaken in the future.³⁵ We can identify Hegel's expectations: the dynamic of mutual recognition extended to the family strengthens intimate ties, despite the fact that we face a diversity of familial settings and that individual relations are more fragile (being based on mutual recognition rather than hierarchies). Their fragility arises exactly because they are based on freedom. Furthermore, we have ample time to witness this fragility. In a family (and not only here), a tragic worldview may celebrate its comeback after Hegel banished it into a past age: not only can what happened not unhappen, but once it sinks into the familial tissue, it has a strange capacity of resurfacing. And even whatever is good is witnessed in its weakening, its death, in its evanescence.³⁶

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35 For more on this perspective, see Riley (1983, 439–454).

36 This work was supported by the European Regional Development Fund-Project “Creativity and Adaptability as Conditions of the Success of Europe in an Interrelated World” (No. CZ.02.1.01/0.0/0.0/16_019/0000734).

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“The European Spirit”: Some Remarks on the Idea of Europe from a Hegelian Point of View

Stascha Rohmer

1 Introduction

The European Union is experiencing the most profound crisis since its foundation in 1993. The difficult economic situation, which is now exacerbated even more by the current refugee crisis, puts intra-European solidarity and political cohesion and their citizens to an acid test. At the same time, we are facing popular discontent in nearly all member states and an increasing number of movements pleading for more transparency in political decision-making, for more efficient mechanisms of democratic control and for more social security. Already in 2011, Jürgen Habermas pointed out:

The political elites [in Europe] have actually no interest in explaining the people that important decisions are made in Strasburg; they are only afraid of losing their own power. [...] I condemn the political parties. Our politicians have long been incapable of aspiring to anything whatsoever other than being re-elected. They have no political substance whatsoever, no convictions.

DIEZ 2011

A vague feeling of discontent, however, dates further back. In 2000, the renowned German historian Hagen Schulze stated, with some concern, that Europe had lost much of its attractiveness among the younger, present generation of Europeans:

A generation who has experienced neither the National-Socialist nor Stalinist dictatorship, and who hardly feels threatened by the East, tends to see Europe as a bother, a tangle of bureaucratic institutions, the actions of which are often difficult to understand, as a continent of butter-mountains and milk-lakes, or as a field of murderous conflict between

Dutch and French pig farmers, without any internal, intellectual or cultural cohesion, an entity without necessity or legitimacy.

SCHULZE 2000, 5¹

A similar skeptical tone is struck by the German political scientist Werner Weidenfeld:

The supporting beams of European integration from the moment of the foundation of Europe have lost their stabilizing power: Peace has been attained on the continent of Europe, the threat from the East has evaporated, and the internal market is nearly perfected. The successes have been consumed, and Europe is exhausted.

WEIDENFELD 2007, 13

Weidenfeld points out that, even among the elite, trust and acceptance of Europe are eroded, and tacit approval has been wasted away. Lack of enthusiasm characterizes even philosophical literature on Europe and distinguishes it from what authors wrote in the first half of the last century. While, at the moment, Europe does not seem to be of interest for philosophical writing, a century ago, thinkers such as Edmund Husserl, José Ortega y Gasset, Hans Georg Gadamer, Karl Jaspers, Albert Schweitzer, Helmut Plessner, Benedetto Croce, Paul Valéry, Hugo von Hofmannsthal or Albert Einstein, under the impact of two world wars, engaged themselves in European integration along with politicians like Monnet, Schuman, de Gasperi, Churchill and Adenauer. Consequently, theoreticians such as Husserl, Ortega y Gasset and, later, Gadamer, posed the question of European identity as a *philosophical* one. In contrast, research on Europe nowadays is largely empirical. The question of European identity, however, cannot be answered empirically. Today, more than ever, Hagen Schulze's dictum holds true: "Europe is the forest which we fail to see on account of all its trees." Weidenfeld rightly emphasizes that present Europe is in "a profound spiritual crisis of orientation": Europe is "searching for itself." Like Muschg (2005), Weidenfeld also sees the origin of the current crisis in the fact that Europe still has to find "a convincing answer to the question as to its own identity and values" (Weidenfeld 2007, 14). Indeed, this becomes obvious in the current renaissance of European nationalisms. In a referendum on 23 June 2016, 51.9% of the participating UK electorate (the turnout was 72.2% of the electorate)

1 All quotations by Ortega y Gasset, Hagen Schulze and Werner Weidenfeld which appear in this article are translations made by the author, Stascha Rohmer.

voted to leave the EU. The so-called Brexit was the first big blow for the EU. Another danger are national autonomist movements in the member states of the EU. Not only a remarkable part of the Catalan population wants the separation from Spain, but also, for example, in South Tyrol, Flanders and Corsica, national autonomist movements are winning people. In Germany, for the first time since 1945, a far-right party—the so called “Alternative für Deutschland.” (AfD)—is represented in the Bundestag with 94 deputies. The same happened in Spain, where for the first time since the end of the Franco dictatorship in 1975, the far-right party “Vox” was voted in 2019, represented in the Spanish parliament with 24 deputies. The success of this type of nationalistic movements makes obvious that there exists a strong need for national identity, transparency and value orientation in huge parts of the European population, a need that the European Union obviously has not satisfied, because European politics always turns away from the three essential questions: firstly, what is European identity?; secondly, what are European values?; and thirdly, what is, therefore, a justification of the existence of the European Union founded in?

2 Reclamation of Guiding Cultural Ideas as a Challenge for the Philosophy of History

It is thus required, put in the words of Julian Nida-Rümelin, the “reclamation of guiding cultural ideas,” namely of those which are based upon a European identity and which articulate it (cf. Nida-Rümelin, 2006). Such a reclamation of guiding cultural ideas is a genuinely philosophical task. But this task immediately faces two difficulties. One of these difficulties can easily be shown to be a pseudo-problem; but the second can only be defined as a task for our research. The first difficulty in developing common cultural values and guiding ideas consists in the fact that European culture always prominently featured rationality and the claim of universality. From this point of view, Hegel is still the most important, modern European philosopher. Hegel pointed out that universality must be considered as the basis of European culture: “It is, however, the concrete universal, self-determining thought, which constitutes the principle and character of Europeans” (*Enc.*, 59 ff.). And this means that from a Hegelian point of view, the concept of European culture has not only a historical and geographical dimension, but a strong normative one as well: culture, in Europe, has always been understood as the opposite of barbarism. The concept of reason therefore cannot be reduced to the concept of culture, and rationality cannot be reduced to a merely cultural phenomenon. Instead, according to Hegel, in Europe we require the concept of universal reason and

Sittlichkeit ("ethical life") in order to give meaning and content to the concept of culture. This involves that Europeans cannot explicate its values solely in terms of history and tradition. Therefore, one could argue that universalism (in Hegel's sense as concrete universal, self-determining thought and ethical life) and European identity would seem to exclude one another, for the norms and values of European culture—insofar as they are understood to be *universal*—do not seem to be able to justify a genuinely *typical* kind of *European* culture.

Against this, it might be objected that today's rational European culture is essentially the result of immanent processes of *self-criticism* and a permanent *revision of its own foundation*. We take for granted that there cannot be a deep insight into western culture and history without the assumption of a history of decline, which has always been present. One only needs to mention the Thirty Years' War (1618–1648) to realize that this inner split—which also marks the birth of national cultures and modern identity—has frequently led Europe to an entropic process. The history of European culture as history of inner differentiation is also the history of a self-distance and a self-critical process, a process that has often brought Europe to the verge of self-destruction. According to Grendler, the Renaissance culture can also be characterized as a "culture of criticism" (cf. Grendler 2006), a criticism which results in the emancipation-process of the modern individual (cf. Walser 1932). Indeed, especially Hegel in the *Phenomenology of Spirit* considered the process of self-realization of European thought a *Weg der Verzweiflung* (way of desperation). The tension between universality and particularity, i.e. European identity, is not one which could ever be resolved. As present communitarianism has shown, normative claims can only be justified with reference to the existing discourse, cultural imprints and modes of justification. In this way, the normative and historical aspects of our concept of culture can easily be mediated, namely by conceiving ourselves and our civilization as the continuing and never quite accomplished achievement of a rational discourse, which goes all the way back to classical antiquity.

The second difficulty, which can only be formulated as a task for our research, consists in the following: If we understand our rationality today as part and outcome of a discourse with roots already in the classical antiquity, and if we understand our rationality in the concrete sense, in which Hegel uses the term *Weltgeist*, then we postulate that reason not only has a history, but that reason exists at the same time within history. Consequently, we may assume that European civilization is based upon rational foundations which came to be historically grown and remain more or less stable. And precisely here lies the second problem: the existence of such a form of reason in history—which especially Hegel postulated—can easily be contested with reference to the

many splits in European history, its obviously irrational events, its wars, its mass graves and the inconceivable horror of the Holocaust. “*Die Weltgeschichte ist das Weltgericht*”—“The history of the world is the Last Judgement”—is one of the most famous and most criticized aphorisms in Hegel’s works: Because of this aphorism, Walter Benjamin called Hegel a *Gewaltmensch* and a mystic of violence,² someone who is inspired by the idea that the World Spirit fights on the side of the big battalions (cf. Rosen 2014). Indeed, the Hegelian idea that the course of history is the true theodicy, the justification of God in history, has obviously become alien to us today.

However, if we completely forsake the belief in a connection between reason and history, then there is obviously no longer any difference between human history and the history of nature. Seen from this perspective, the difference between a war, an ethnocide, an earthquake and the impact of a comet could only be described in terms of the number of victims, since each of these events would have no rationally reconstructible final causes. With that, we would also trivialize the distinction between perpetrator and victim, which would, in turn, hinder the possibility of reconciliation. The occurrence of great upheavals in the history of Europe—for example, the Holocaust—still poses serious and difficult questions for the research. Even if these questions may never be completely answered, we must nevertheless do our best to keep them alive. But this is only possible if we commit ourselves to retaining a connection between reason and history and a kind of continuity in the history of Europe, which especially Hegel postulated in his Philosophy of History. As Ludwig Siep pointed out, “Europe as this cultural history and Idee, according to Hegel includes the Greek, Roman and Germanic-Christian world” (Siep 2001, 16). In order to find a reasonable concept of European identity and historic grown European values as national foundations of European integration process, we also need a revival of the philosophy of history that has been forgotten almost everywhere in the world.

3 Europe—the Elephant Which We Seldom See?

What is Europe, then? Paul Valéry once said: “Europe is a peninsula of Asia.” In fact, there is no clear natural border between Asia and its Western subcontinent. Since antiquity, there have been attempts by geographers to divide

² “If we were to get into his work for just a short time, I think we would soon arrive at the spiritual physiognomy that peers out of it: of an intellectual brute, a mystic of brutal force, the worst sort there is: but a mystic, nonetheless” (Benjamin 2012, 113).

Europe off from Asia, using, variously, the Ural Mountains, the Don River or, later, the Volga River as borders. All of these attempts must be seen as acts of desperation. Yet the cultural landscape would seem to be much like the geographical one: Together with an immense diversity of landscapes, we find a great diversity of cultural manifestations. If one only considers the great number of languages that are spoken in Europe today, the idea that there is such a thing as a common European identity—the notion that one could even form a more or less consistent concept of “Europe”—seems illusory, even presumptuous.

But, is not the very assumption that we can adequately conceptualize reality, and grasp it through ideas, typical of Europe and its intellectual history? Is not the very belief in the reality of reason and the rational structure of reality—which is deeply ingrained in occidental self-awareness—what constitutes European identity? In fact, according to the German philosopher Josef Simon (2000) the very notion of “ideas” and “concepts” is, at root, genuinely European. Of course, we encounter conceptions of “concepts” and “ideas” outside of European thought, although it is debatable whether the equivalent terms in these cases are really equivalent in meaning. As Simon shows, the very approach which assumes that concepts are understandable, independent of any sensory perception, is something typically European. Formulations such as “the Concept of Europe” or “the Idea of Europe” vouch paradigmatically for the fact that when we Europeans speak about Europe, we always find ourselves in a hermeneutic circle which is constitutive for both our understanding of ourselves and our identity as Europeans. As Ortega y Gasset made clear in connection with the work of Dilthey and Husserl, the question of European identity—and as to that what is common in the European consciousness of culture—is identical with the question concerning the most general mechanisms of identification which underlie our European self-understanding. Ortega called these general mechanisms of identification, upon which such collective entities as cultural communities are based, “certitudes of belief” (*creencias*). “Certitudes of belief” may be understood as prejudices, as in Gadamer’s explication of the concept of a *Vorurteil*. According to Ortega, it’s a fact that we have clear ideas, but live in the certitude of certain beliefs without being aware of it. It is the task of philosophy to make the beliefs, which unconsciously rule us, accessible to rational discourse. Analogously, Alfred North Whitehead, in his last work on the philosophy of culture, saw the foundations of civilized community in those structures of our self-understanding which are responsible for the fact that we deem certain things self-evident (cf. Whitehead 1968; Rohmer 2010). Whitehead once said with regard to these self-evident beliefs: “Sometimes we see an elephant, and sometimes we do not. The result is that an elephant,

when present, is noticed" (Whitehead 1978, 4). Perhaps, *Europe* is the elephant which we seldom see, since Europe is (for us as Europeans), in a certain sense, always with and around us. The difficulties that are encountered when we seek to grasp the common aspects of all European cultures, from our point of view, lie in the highly general character of the very structures which connect the European nations. In accordance with the perspective which we seek to develop, it is these very structures which are anchored deep in the self-understanding of each and every European nation, and which represent, despite their generality, the existential base for all European national cultures.

In fact, parting from a Hegelian point of view on European history, we can assume that there are three pillars or fundamental certitudes of belief upon which European identity is based: first, the belief in the universality of reason; second, the belief in the inalienable dignity and uniqueness of each human individual—if we combine these two beliefs with one another, we may derive from them the fundament of European culture; and thirdly, a European humanism which has its origin in classical antiquity (cf. Schadewaldt 1978, Pohlenz 1964). The discovery of reason as an independent reality, as a system and method which makes science, technology and, above all, philosophy possible, is thus to be seen as a genuinely Greek accomplishment. Edmund Husserl, at the beginning of the last century, spoke of the "birth of Europe from the spirit of philosophy." And the sociologist Max Weber spoke, in connection with the discovery of reason, of a process of rationalization as an exclusive and determining characteristic of Europe. Following this Hegelian thread, he supposed continuity from the Greeks to the present, as Horkheimer and Adorno would also do in their work on *The Dialectic of Enlightenment*. Rationalism, both boon and bane, was indeed the secret of the century-long domination of the world by European powers through means such as military technology and bureaucratic organization. And if, as Schulze states, "there is a world culture beyond all national and regional particularities, then it exists upon the basis of the European idea and the European application of reason" (Schulze 2000, 12).

The two definitive characteristics of the European belief in reason, which are very important for the Hegelian understanding of philosophy as a science, can be seen particularly in its origins: 1) one is the conviction that thought can apprehend reality by means of concepts and ideas. This implies that not only our thought, but also the world as it is, have a conceptual, rational structure. And this, in turn, is an assumption which expresses a condition for the possibility of objective knowledge and a form of science which is independent of tradition and culture. 2) The other definitive characteristic consists in the belief that man is to be distinguished from other living beings by the fact that he has privileged access to the rationality inhabiting the world, which is a

cosmos ordered according to principles of reason. And because of this special human privilege, a human being is able to communicate with others of his kind concerning what is “true” and “false.” Both of these assumptions have led, already in antiquity and particularly in the early Stoa, to the recognition of the uniqueness and dignity of every human person, and thus to a first form of humanism with a “cosmopolitan bent” (cf. Sellars 2006). Man—be he the citizen of a *polis*, or a barbarian—deserves to be respected, because he takes part in the rational structure of the world which is *logos* by virtue of his ability to think. “For the Stoa, it goes without saying that the universality of the law of reason is mediated by nothing other than the insight of the individual” (Gerhardt 2007, 109).

The law of reason prescribes “nothing but what, for man, is his own *logos*” (Pohlenz 1964, 138). The ancient belief in the uniqueness of each individual person was decisively strengthened in the course of European history by the Judeo-Christian belief that man is made in the image and likeness of God. Since, from this perspective, each human individual is—to quote Ranke—“equal to God,” each human person has inalienable rights with regard to his fellow men and over and against each sort of organization (cf. Schulze 2000). In the words of the German theologian Huber: “God addresses everyone in the same way; this is the basis of the fundamentally equal status of each individual. This gives rise both to the idea that no one should be denied the right to have rights and to an approach to human rights that links freedom and equality” (Huber 2005, 86). It is of utmost importance for our approach that, in Europe, the belief in the universality of reason and the reality of the universal has, from its very inception in classical antiquity, never stood in opposition to the importance of the human being as an individual. Instead, this belief is foundational for the further belief in the autonomy of the person, which in turn may be considered the basis for the European understanding of individuality. In fact, the concept of the autonomous individual integrates an entire range of conceptions of freedom, and may be seen as a genuinely European accomplishment which—in a historical perspective—is not found in this form in any other cultures. (cf. Koepping, Welker and Wiehl 2002).

Thus, the only guarantor of European identity as a product of history has to be seen in what Hegel calls *Europäischer Geist* (“European Spirit”) as the result of the European history of thought. According to Hegel, the

European spirit opposes the world to itself, and while freeing itself from it, sublates this opposition by taking back into the simplicity of its own self the manifoldness of this its other. This accounts for the dominance of the European’s infinite thirst for knowledge, which is alien to other races.

The world interests the European, he wants to get to know it, to possess the other with which he is confronted, to bring into intuition the inner rationality of the particularities of the world, of the genus, the law, the universal, of thought. In what is practical, as in what is theoretical, the European spirit strives to bring forth unity between itself and the external world. It subdues the external world to its purposes with an energy which has ensured for it the mastery of the world. Here, the individual enters upon his particular activities on the basis of firmly universal principles. In Europe, moreover, the state exhibits an unfolding and actualization of freedom, by means of rational institutions, which is more or less free from the license of despotic rule.

EPS, 61

Certainly, from today's point of view, the Hegelian concept and glorification of the European spirit as master of the world seem deeply questionable, if one considers the monstrous crimes that European countries committed the last centuries, for example those perpetrated by the European colonial powers. The modernity of Hegel's concept of Europe, however, consists in the fact that Hegel offers a rational fundament for the idea of European identity instead of referring to concepts such as "homeland," "race," or "patriotism." The rational conception, which he has in mind, seeks to overcome the potential of conflict which separate the European national states from each other: "The European nations form a family in accordance with the universal principle underlying their legislation, their customs, and their civilization." (*PR*, § 339 Z, 315, cf. Vieweg 2012, 497–498). It is therefore completely wrong to consider Hegel as a philosopher who paved the way for National Socialism and Fascism, as Karl Popper did in the second part of his famous book *The Open Society and Its Enemies*.

4 Looking for Universally Valid European Values

It is decisive for the dynamics of European history that the process of the emancipation of the individual, from Renaissance up to the present day, was not in opposition to the realization of general ideas, i.e. the realization of democracy, human rights and social justice. As Erzsébet Rózsa pointed out, one of the central concepts which according to Hegel characterize the "European Spirit" is the concept of *Versöhnung* (reconciliation). According to Rózsa, this idea of reconciliation leads Hegel to the conception of a social state with a system of administration of justice. Such social state transcends liberalism and

underlines at the same time the importance of the solidarity of the community (Rózsa 2001, 48).

If, on the one hand, we realize that European societies today are facing an increasing loss of solidarity and, on the other hand, that the European unification process has got stuck, we will have to focus on what has been the glue for Europe and thus has to show the way forwards. This transforms the question of European identity into the concrete question of universally valid European values. In this sense, the Norwegian political scientist Erik O. Eriksen asks: “What are the normative forces, or sources of normativity—authority or the binding effect of a claim—that make acceptance and compliance likely in the European integration process? The European project holds some principles and values without which the EU would not have been realized.” (Eriksen, 2014, 16). But what are these typical European principles and values, and how can we justify them in face of European history?

It is well known that the EU traces its origins from an Economic Community: the *European Coal and Steel Community* (ECSC) and the *European Economic Community* (EEC), established respectively by the 1951 *Treaty of Paris* and 1957 *Treaty of Rome*. But today the EU wants to be much more than just an economic community, namely a community of values. Especially in the “Treaty on European Union” (2007), we find the claim that the EU is founded on fundamental values such as “the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.” The member states share a “society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail” (Article 2). Article 3 then states that the EU has to promote peace, European values and its citizens’ well-being.

A simple fact, such as the fact that the introduction of the Euro and the associated austerity measures have made a big part of the young European generation unemployed, especially in the southern European countries (like Italy), shows that there is a strong tension between the concept of Europe as an economic community and the concept of Europe as a community of values. This tension also becomes obvious in the fact that the European national autonomist movement, as in the case of Catalonia or South Tyrol, are particularly strong in the richest federal states. Here, the inner-European solidarity is put to the test in so far as the richest federal states do not want to support and to pay for their poor neighbor federal states in the same country (in Germany we call this form of support *Länderfinanzausgleich*). At the same time, independence movements, e.g. the Catalan movement, seek to achieve the foundation of an independent republic which becomes at the same time a member state of the EU. Is this not a contradiction?

In Hegel's *Philosophy of Right* of 1820, we find an interesting distinction between two forms of social order. The civil society (*bürgerliche Gesellschaft*) and its system of market economy constitute the "external state" (*äußerer Staat*, § 183), while the internal unity of state is expressed in the inner constitutional law (*inneres Staatsrecht*, § 259). The inner constitutional law expresses that "the state is the actuality of the ethical Idea" (*PR*, § 257, 228).³ According to Hegel, between the external and the inner state, between the economic community and the community of values, there is no contradiction: in both, one and the same state is manifested. Hegel can support this thesis because he assumes that civil society is rooted in a necessary self-differentiation of the moral substance of the society, a moral substance, which is nothing else than the "Idea" of the state:

The Idea in this its stage of division grants to each of its moments a distinctive existence; to *particularity* it gives the right to develop and launch forth in all directions; and to *universality*, the right to prove itself not only the ground and necessary form of particularity, but also the power over it and its final end. It is the system of the ethical life, split into its extremes and lost, which constitutes the Idea's abstract moment, its moment of *reality*. Here the Idea is present only as a *relative totality* and as the inner necessity behind this outward appearance. *Addition*: Here ethical life [*das Sittliche*] is split into its extremes and lost.

PR, § 184, 181–182

From Hegel's point of view, it is precisely this split, this self-differentiation of the European spirit, which is surpassed by the reality of the constitutional state. The civil society consists of families and single individuals initially pursuing their own interests. But they can only pursue their own interests by cooperating with each other:

The concrete person, who as a *particular person* is his own end, is, as a totality of needs and a mixture of caprice and natural necessity, one principle of civil society. But the particular person is essentially so related to other particular persons that each asserts himself and finds satisfaction by means of the others, and at the same time simply by means of the form of *universality*, the second principle here.

PR, § 182, 180–181

3 "Der Staat ist die Wirklichkeit der sittlichen Idee (*GPR*, 398).

From Hegel's point of view, in the process of cooperation, the external state is transformed into the internal constitutional state. For in the process of cooperation it becomes evident that the preservation and protection of the community is an end in itself that transcends all these particular ends, which dominate the external state, i.e. the system of market economy. Even if it initially appears to be that the community is the result of cooperation, it ultimately emerges that the community as an end in itself is rather the basis for every cooperation. Therefore, relational values, which found the condition of the possibility of cooperation, must be effective in the cooperation as "binding effect of a claim" in the terms of Eriksen. "Unification as such is itself the true content and aim, and the individual's destiny is to live a universal life" (*PR*, § 258, 229).

If we apply these Hegelian ideas to the situation of the European Union today, we must ask ourselves: Which values of Europe are ends in themselves, and in what ways can these values help to overcome the existing contradictions between the European national states? The EU has created the biggest internal market of the world. But—from a Hegelian point of view—this is only the "external state." Taking into account that the EU is currently suffering its most profound crisis since its foundation, we have to ask ourselves: How can we transform the existing external state of Europe into the reality of an inner state of Europe, based on historic grown and justified values? The Marxist idea that the opposition of civil society and the world of values could be overcome by the socialization of the means of production has obviously turned out to be false: all communist projects must be considered as having failed.

If we understand Europe as a philosophical idea, as Hegel does, another central concept of Hegel could be important in this context from an idealistic and more metaphysical perspective: the concept of *Anerkennung* (recognition). As Axel Honneth rightly points out, the three moral spheres in which, from Hegel's point of view, the ethical life develops itself (family, civil society and state), are based on specific forms of mutual recognition of the individuals (Honneth 2018, 174). While in the case of the family, recognition is based on the principle of love, in the case of bourgeois society and of the states, recognition is mediated by institutions in a purely rational process. At this important point, Hegel begins to contradict himself, as he emphasizes, on the one hand, in his whole work the rationality of love. In the *Philosophy of Right* he also points out that the "natural sexual union" in human ethical life is transformed in a "spiritual, self-conscious love" (§ 161). But on the other hand, in the *Philosophy of Right* Hegel opposes love and rationality, ethical and intellectual life, while he tries to overcome this contradiction by assigning women and men different roles in the development of the spirit:

The difference in the natural characteristics of the two sexes has a rational basis and consequently acquires an intellectual and ethical significance. This significance is determined by the difference into which the ethical substantiality, as the concept in itself, sunders itself in order that, through this difference, its vitality may become a concrete unity.

PR, § 165, 168

While the sphere of man is the “*free universality*,” the “other sex is spirit maintaining itself in unity as knowledge and volition of the substantial, but knowledge and volition in the form of *concrete individuality* and *feeling*” (*PR*, § 166, 168). Obviously, this Hegelian conception is completely unacceptable nowadays, as it excludes the possibility of woman’s emancipation, and even more, it excludes the participation of women in the public life of the state. The sphere of the man and that of the woman are separated as day and night. But this split between men and women, public and private life, demonstrates in a paradigmatic manner that there is still tension between concrete individuality and free universality in Hegel’s thinking. From a theoretical point of view, this split could be very important for further investigations, parting from Hegel’s dialectic conception of the universe and his conception of the relation between immediacy and mediation in intersubjective relationships. According to Hegel, “the aim of philosophy, by contrast, is to ban the indifference [*Gleichgültigkeit*] and come to know the necessity of things so that the other appears standing opposite it as its other” (*Enc.*, § 119, 185). The split between the outer and the inner state, which characterizes (not only) Europe today, leads to question once again the origins of indifference (*Gleichgültigkeit*) and human self-alienation in a world dominated by economic rules. For such a purpose, Hegel is certainly an important starting point.

Abbreviations of Hegel’s Writings

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The State and Ethical Life in Hegel's Philosophy

Jiří Chotáš

And our day has seen a step taken toward the rational existence of the state that has not been taken for a thousand years past: the right of reason has been asserted over against the form of private right.

LNR, § 125, 225



Hegel's contribution to political theory has been described as follows: "It gave a special meaning to the concept of the state, and invested that concept with connotations for which there was no analogue in the political thought of France and England but which made it throughout the nineteenth century the central principle of German political and juristic philosophy" (Sabine 1951, 557 f.). What were these connotations? Hegel is convinced that the main role of the state is to provide society with security and order. He also believes that with respect to the economy, the state should play a regulatory role, so as to insure the welfare of its citizens. And finally, Hegel also holds that a stable state requires for its existence that certain laws, customs, and institutions be accepted by its citizens. This aspect of the state is what Hegel calls the 'ethical life' (*Sittlichkeit*). To maintain this ethical life, the state can educate its citizens so as to imbue them with loyalty and patriotism. This, the third aspect of Hegel's conception of the state, may sound somewhat suspect, especially within the Anglo-Saxon environment, because it assigns to the state a large role in the lives of individuals. Is it not rather so that a modern state ought to be neutral with respect to the political education of its citizens, leaving it up to them to decide whether they wish to be interested in politics, prefer just living their private lives, or want to focus on engaging in economic activities in civil society?

In the following, let us try to analyze these less known connotations of Hegel's concept of the state in more depth. First, we focus on the distinction between the state and two other spheres of ethical life in Hegel's thought, namely family and civil society. Then we can deal with Hegel's description of citizen's political awareness, their 'political disposition,' and ways of fostering

and strengthening it. And finally, we turn our attention to Hegel's concept of constitutional monarchy as a particular form of the state. In the course of the exposition, the mutual interconnections between these aspects of Hegel's concept of the state should hopefully come to the fore and become readily apparent.

1 The State and the Family

In the introductory paragraphs of the section on the state in his *Elements of the Philosophy of Right* (= *Philosophy of Right*, 1820), Hegel defines the state as follows:

The state is the actuality of the ethical Idea—the ethical spirit as substantial will, *manifest* and clear to itself, which thinks and knows itself and implements what it knows in so far as it knows it. It has its immediate existence in *custom* and its mediate existence in the *self-consciousness* of the individual, in the individual's knowledge and activity, just as self-consciousness, by virtue of its disposition, has its *substantial freedom* in the state as its essence, its end, and the product of its activity.

PR, § 257, 275

The state is the actuality of an ethical idea in the sense of including the determinations which Hegel elucidated in the preceding parts of his treatise. First of these was the abstract concept of free will which, via its particular actualizations—such as moral person, family, or civil society—acquires a particular content (cf. *PR*, § 279 R, 317).¹ Like Rousseau, Hegel is convinced that the chief principle on which the state is based should be the universal will. In the passage quoted above, Hegel explains this free will in terms of the substantial will which reflects what it knows and acts accordingly. This will is substantial in the sense of knowing that the will of the state takes precedence and is superordinate to the will of individuals, which are in relation to it in the position of accidents. In this respect, the state is similar to family. According to Hegel, it holds of both of these institutions that the “ethical substance, as containing self-consciousness which has being for itself and is united with its concept, is the *actual spirit* of a family and a people” (*PR*, § 156, 197). The ethical substance

¹ For more on Hegel's explanation of the concept of the will in relation to civil society and the state in the *Philosophy of Right*, cf. Baum 2004.

is a concept which Hegel applies to the “the objective sphere of ethics,” which consists of “*laws and institutions which have being in and for themselves*” (PR, § 144, 189). This objective sphere is complemented by a subjective sphere which consists of the subjects’ self-consciousness. “In this *actual self-consciousness* [which it now possesses], the substance knows itself and is thus an object of knowledge” (PR, § 146, 190). Both spheres of the ethical life are, according to Hegel, interconnected. To a subject, the ethical substance and its laws and powers represent “absolute authority and power,” but they are not alien to it because “the subject bears *spiritual witness* to them as to *its own essence*, in which it has its *self-awareness* and lives as in its element which is not distinct from itself” (PR, § 146, 191). In the family, the ethical spirit is present as “immediate or natural,” while in a state, it exists as substantial will.

In the next step of his account, Hegel focuses on the differences between the family and the state, noting that the “*Penates* are the inner and *lower* gods, and the *spirit of the nation* (Athene) is the divine which *knows* and *wills* itself. *Piety* is feeling and ethical life governed by feeling, and *political virtue* is the willing of that thought end (*gedachten Zweck*) which has being in and for itself” (PR § 257 R, 275).

The Penates are ancient Roman gods, generally perceived as the symbol of family life. With respect to the organizing principle of the family, Hegel speaks of “the spirit’s *feeling* of its own unity, which is *love*” (PR, § 158, 199). He explains this principle using the example of marriage, which is also an “*immediate ethical relationship*.” It includes two chief aspects, namely “natural vitality” embodied in desire for children, and a particular kind of self-consciousness, in which “the *union* of the natural sexes ... is transformed into a *spiritual* union, into self-conscious love” (PR, § 161, 200 f.). Moreover, the “*ethical* aspect of marriage consists in the consciousness of this union as a substantial end, and hence in love, trust, and the sharing of the whole of individual existence” (PR, § 163, 202).

The spirit of the nation or state, on the other hand, is symbolically embodied in the ancient Greek goddess Athena, patroness and protector of the city of Athens. Political virtue consists in the conscious, and not just vaguely felt, willing of certain purpose for its own sake. In the family and in the state, ethical life can thus manifest itself in different ways. In a modern state, ethical life cannot be immediate, as it is in families and used to be in the city states of antiquity. In the state, it must draw both on the customs and the self-consciousness of individuals. Individuals should therefore be aware of the laws, customs, and institutions which constitute the state and they can also ask after their justification.

It might at first glance seem surprising that Hegel opens his explanation of the concept of the state in his *Philosophy of Right* with an analysis of differences

between the state and the family. Nevertheless, in his other writings, Hegel uses this distinction to draw certain political implications, in particular to reject a patriarchal government. He does so for instance in his *Lectures on Natural Right and Political Science* (1817–1818), where he says:

The general dividing line between constitutions is between those that are based on nature and those based on freedom of the will. In the case of those based on nature, people who are weaker in disposition, or in other ways, attach themselves to families of noble lineage or heroic dynasties and assume a stance of naturally divine dependence on them. According to this principle, however, private right and political right belong to the will of the individuals as such as their own property.

LNR, § 135, 242

When speaking of patriarchal government, Hegel has in mind mainly the ancient oriental empires, such as India, Persia, or China. In all these empires,

individuals as sons have no personality, [no] right or property on their own account vis-à-vis the ruler, and in which distinctions of class, of civil life are fixed by birth as separate castes. In it, the secular government is at the same time theocratic, the ruler is also the high priest or a god, the constitution is religion, and religious and moral precepts and usages are at the same time laws of the state and laws of right.

LNR, § 166, 309

If in ancient times, patriarchal rule represented the main threat to the state because it made little distinction between private and public law,² in modern times, the main danger to the state comes from civil society. Let us now turn to Hegel's exploration of this issue.

2 The State and Civil Society

In the section on civil society, Hegel shows that this modern institution, as a sphere of individual economic activity, rests on two principles: on the citizen (in the sense of *bourgeois*), as a particular person "is his own end," and

² "Hegel assumed a contrast of private with public or constitutional law which was wholly foreign to English political thought" (Sabine 1951, 532).

on the mutual economic relations between such persons. This relation is such that “each asserts itself and gains satisfaction through the others” (*PR*, § 182, 220). Hegel calls this system of interdependence “the *external state*, the *state of necessity* and *of the understanding*” (*PR*, § 183, 221).³ Hegel adopts from Adam Smith the thought of the free market where citizens as private persons “have their own interest as their end” (*PR*, § 187, 224). Nevertheless, thanks to the division of labor, their “*subjective selfishness*” is transformed into “a *contribution towards the satisfaction of the needs of everyone else*,” so that by “a dialectical movement, the particular is mediated by the universal so that each individual, in earning, producing, and enjoying on his own account, thereby earns and produces for the enjoyment of others” (*PR*, § 199, 233).⁴

The dynamics of civil society require the existence of institutions that supervise its functioning. The first of these institutions is the administration of justice (*Rechtspflege*) (*PR*, § 209, 240). Hegel demands that this administration be public, because “although the particular content of the case may be of interest only to the parties themselves, its universal content (i.e. the right within it and the decision on this right) is of interest to everyone” (*PR*, § 224, 254). Then there must also exist the police (*Polizei*) or the public authority whose role is to support and regulate the activities of civil society so as to secure “the livelihood and welfare of individuals” (*PR* § 230, 260). Hegel understands the task of the police more broadly than we would nowadays: in addition to crime prevention and bringing criminals to justice (*PR*, § 232, 260), the police should also “provide for street-lighting, bridge-building, the pricing of daily necessities, and public health” (*PR*, § 236 A, 262), “supervise and influence the [public] *education* of children” (*PR*, § 239, 264), establish and operate public poorhouses and hospitals (*PR*, § 242, 265), and so on. And finally, civil society should also include institutions whose membership is determined by occupation, that is, corporations (*Korporationen*). They represent the ethical element in civil society, especially for the estate of trade and industry, because a “member of civil society, in accordance with his *particular skill*, is a member of a corporation whose universal end is therefore wholly *concrete*, and no wider in scope than

3 “Civil society is an ‘external’ state because it does not fulfill the requirements of political autonomy and because the state institutions in civil society, the Administration of Justice and the Public Authority [= Police], are viewed as mere instruments for achieving personal aims” (Westphal 1993, 259).

4 Westphal further explains: “Hegel saw what atomistic individualists overlook in the division of labor: specialization requires coordination, and coordination requires conformity to ‘the universal,’ to common practices” (Westphal, 1993, 257).

the end inherent in the trade which is the corporation's proper business and interest" (*PR*, § 251, 270).

Once all these definitions and specifications are in place, Hegel can outline the relation between the state and civil society:

The state is the actuality of the substantial *will*, an actuality which it possesses in the particular *self-consciousness* when this has been raised to its universality; as such, it is the *rational* in and for itself. This substantial unity is an absolute and unmoved end in itself, and in it, freedom enters into its highest right, just as this ultimate end possesses the highest right in relation to [the] individuals [*die Einzelnen*], whose *highest duty* is to be members of the state.

PR, § 258, 275

Hegel first notes that in the state, particular self-consciousness achieves a higher degree of universality than in civil society. Let us remind ourselves that in civil society, universality is always limited: the individual corporations or communal associations follow their needs and purposes and their interest in the universal is limited to what is pertinent to their activities. In the state, on the other hand, politics as such is concerned with the universal. Hegel does not wish to imply that in the state, individuals should relinquish their subjectivity. On the contrary: "The principle of modern states has enormous strength and depth because it allows the principle of subjectivity to attain fulfilment in the *self-sufficient extreme* of personal particularity, while at the same time *bringing it back to substantial unity* and so preserving this unity in the principle of subjectivity itself" (*PR*, § 260, 282). We have already observed that a modern state allows its citizens to act, within the sphere of civil society, as private persons. In a state, however, it is also necessary that the individuals act as politically conscious citizens (*citoyens*). In other words, "the universal does not attain validity or fulfilment without the interest, knowledge, and volition of the particular, and ... individuals do not live as private persons merely for these particular interests without at the same time directing their will to a universal end and acting in conscious awareness of this end" (*ibid.*).

In analyzing the relation between the state and civil society, Hegel then observes that "the state is the actuality of the substantial *will* ... as such, it is the *rational* in and for itself" (*PR*, § 258, 275). This should be understood as amounting to the claim that the principle of the state is the will of its citizens, which, however, must not be understood as individual will but rather as the universal will, described as "the will's rationality in and for itself" (*PR*, § 258

R, 277). Hegel praises Rousseau for making the will the principle of the state but also criticizes him for understanding the general will as merely that which is common, as that which stems from individual will as conscious. Rousseau explains the coming together of individuals in the state as a social contract, which is therefore based on their arbitrary will and opinions and on their express consent.⁵ Hegel, on the other hand, emphasizes that

the objective will is rational in itself, i.e. in its *concept*, whether or not it is recognized by individuals and willed by them at their discretion—and that its opposite, knowledge and volition, the subjectivity of freedom (which is the *sole* content of the principle of the individual will) embodies only *one* (consequently one-sided) moment of the *Idea of the rational will*, which is rational solely because it has being both *in itself* and *for itself*.

PR, § 258 R, 277

It follows from this explanation of the concept of the will that according to Hegel, the state as an ethical community is characterized by a certain collective, i.e. substantial, will and rationality, regardless of whether the individual citizens recognize and wish it to be so. It would be therefore erroneous to identify the state with civil society. To wit, if “the state is confused with civil society and its determination is equated with the security and protection of property and personal freedom, *the interest of individuals as such* becomes the ultimate end for which they are united; it also follows from this that membership of the state is an optional matter” (PR, § 258 R, 276). According to Hegel, individuals are subordinate to the state:

Since the state is objective spirit, it is only through being a member of the state that the individual himself has objectivity, truth, and ethical life. *Union* as such is itself the true content and end, and the destiny of individuals is to lead a universal life; their further particular satisfaction, activity, and mode of conduct have this substantial and universally valid basis as their point of departure and result.

PR, § 258 R, 276

⁵ Rousseau does, however, make a distinction between the general will (*volonté générale*) and the will of all (*volonté de tous*): “There is often a considerable difference between the will of all and the general will: the latter looks only to the common interest, the former looks to private interest, and is nothing but a sum of particular wills” (Rousseau 1997, 60).

This also determines the relation between the state and civil society: the state as an institution stands above civil society and the family. It allocates to them certain spheres within which they can develop. This is also why Hegel can say that the highest duty of individuals is to be members of a state, because that also enables them to establish families and be economically active in the sphere of civil society. Where the state is absent, such as for instance in Hobbes's 'state of nature,' the other two spheres of ethical life also suffer.

Hegel analyzes the rationality of the state, concluding that "it consists in the unity of objective freedom (i.e. of the universal substantial will) and subjective freedom (as the freedom of individual knowledge and of the will in its pursuit of particular ends)" (*PR*, § 258 R, 276). Therefore, it "consists in self-determining action in accordance with laws and principles based on *thought* and hence *universal*" (*ibid.*). Hegel's concept of freedom is broader than is usual. In his view, objective freedom amounts to acting in accordance with the demands of the universal will, that is, it implies fulfilment of civic duties (such as paying taxes and in times when the state is threatened, serving in its military). The subjective freedom of individuals, that is, their right to shape their own life in the sphere of civil society should be respected but subordinated to their civic duties. Citizens' willingness to serve the substantial will represents in the modern state the highest form of their self-realization. In other words, citizens ought to act autonomously and view laws and principles as expressions of their own will even in cases where their individual will does not fully coincide with the universal substantial will.⁶

It follows from the above that in Hegel's philosophy, the relation between the state and civil society is ambivalent. From the perspective of civil society, the state appears to be a utilitarian institution, an instrument that provides for its functioning. The courts and the police are state institutions which maintain public order in civil society. Nevertheless, according to Hegel, we would be wrong to see the role of the state with respect to civil society in such reductive terms. The rational state is a goal in itself. It offers its citizens a higher self-realization than can be achieved in civil society. An ethical state offers its citizens ethical values with which they can identify.⁷ It also enables the very

6 "Freedom as Hegel understood it had nothing to do with the individualism of English and French political thought but was rather a quality reflected upon the individual by the national power of self-determination" (Sabine 1951, 532).

7 Taylor captures the difference between the state and civil society very fittingly when he writes that "[i]f the state is to realize *Sittlichkeit*, then it must constitute a common life in which all find their identity. But this cannot be if people mainly identify themselves by their private interests and see the state merely as the locus where private interests have come together to reach some kind of compromise essential to a functioning society" (Taylor 1975, 444).

existence of the family and civil society. Yet in order to be able to fully appreciate the state, people must develop loyalty to the state and patriotism. In the following, let us therefore focus on these concepts.

3 Patriotism, the State, and Religion

In his *Philosophy of Right*, Hegel addresses the issue of fostering the awareness of ethical life in the citizens.⁸ These considerations are included in passages on citizens' political disposition, i.e. their patriotism. Hegel says: "This disposition is in general one of *trust* (which may pass over into more or less educated insight), or the consciousness that my substantial and particular interest is preserved and contained in the interest and end (*Zweck*) of an other (in this case, the state), and in the latter's relation to me as an individual" (*PR*, § 268, 288). Hegel is critical of the notion of patriotism as a "willingness to perform *extraordinary* sacrifices and actions" (*PR*, § 268 R, 288). He says this notion is misleading because "just as human beings often prefer to be guided by magnanimity instead of by right, so also do they readily convince themselves that they possess this extraordinary patriotism in order to exempt themselves from the genuine disposition, or to excuse their lack of it" (*PR*, § 268 R, 289). Genuine patriotism is to be understood as "that disposition which, in the normal conditions and circumstances of life, habitually knows that the community is the substantial basis and end" (*ibid.*). In this sense, Hegel believes, everyone is in their daily life more patriotic than they would themselves admit.⁹

According to Hegel, patriotism is a consequence of institutions within the state, regardless of whether they inspire citizens' trust or not. As long as the actions of the institutions manifest a degree of rationality, citizens ought to trust them even if they cannot justify why they do so. In the transcription of the

8 It is well known that Hegel believed in the importance of the political education of citizens. Though the plan never came to fruition, at about the same time as when he wrote his *Philosophy of Right* (1820), he also planned to write a treatise on the education policy of the state. "Last winter I had it in mind to write a book on state education" (*B* 469 [Hegel to Niethammer, Berlin, June 9, 1821]).

9 In a transcription of Hegel's lectures in the *Philosophy of Right*, taken in 1824–1825 by K. G. v. Griesheim, Hegel compares patriotism to national pride (*Nationalstolz*): "Das Zutrauen kann die Form von Nationalstolz haben, dieß einfache Bewußtsein, ich bin ein Preusse, ein Engländer, dieß einfache Bewußtsein daß ich Bürger dieses Staats bin, daß ich das bin was der Staat ist, daß der Staat mein Sein ist. So hat das Zutrauen eine ganz allgemeine Form, aber diese Identität kann auch entwickeltere Einsicht sein" (*VPR* 4, 641).

lectures on the *Philosophy of Right* [taken in 1822–1823 by H. G. Hotho], Hegel introduces a well-known example:

It does not occur to someone who walks the streets in safety at night that this might be otherwise, for this habit of [living in] safety has become second nature, and we scarcely stop to think that it is solely the effect of particular institutions. Representational thought often imagines that the state is held together by force; but what holds it together is simply the basic sense of order which everyone possesses.

PR, § 268 A, 289

This characterization is very apt: the state should not be held together by threat of repression, as in Hobbes's *Leviathan*; it should be maintained by citizens' voluntary obedience which has become habitual. Only then can the state be stable, and only then can it rely on its citizens.

In his *Philosophy of Right*, Hegel treats the subject of relation between the state and religion extensively and in depth (*PR*, § 270 R, 291–304). For our purposes, it is important to note that if religion is of the “genuine kind,” it should be separate from the state but receive various kinds of support from it.

It is in the nature of the case that the state fulfils a duty by giving the [religious] community every assistance and protection in the pursuit of its religious end. Indeed, since religion is that moment which integrates the state at the deepest level of the disposition [of its citizens], the state ought even to require all its citizens to belong to such a community.

PR, § 270 R, 295¹⁰

Not only does that preclude atheism, but it seems to demand membership in one church. Religion, properly understood, contains the foundation which embodies the ethical realm in general, and in this way, it is beneficial for the state. Hegel explains:

As intuition, feeling, and representational cognition whose concern is with God as the unlimited foundation and cause on which everything depends, it contains the requirement that everything else should be seen in relation to this and should receive confirmation, justification,

10 Cf. Siep 2017, 216.

and the assurance of certainty from this source. It is within this relationship that the state, laws, and duties all receive their highest endorsement as far as the consciousness is concerned and become supremely binding upon it.

PR, § 270 R, 292

At this point, it is useful to at least briefly compare Hegel's treatment of the relation between the state and religion with de Tocqueville's description of the influence of morals on the preservation of a democratic republic in the United States of America in his *Democracy in America* (1835, 1840). What de Tocqueville means by morals (*mœurs*) is "the whole moral and intellectual state of a people" (de Tocqueville 2000, 297). He emphasizes that most of the English-speaking North American continent was settled by religious persons who brought with them Christianity, a religion which he views as "democratic and republican." This, he says, had a most beneficial impact on the establishment of the republic and the introduction of democracy in public affairs. As a result, "[f]rom the beginning, politics and religion were in accord, and they have not ceased to be so since" (ibid.). De Tocqueville demonstrates this using the example of Roman Catholics who immigrated to America, noting that "Catholicism appears to me, ... , one of the most favorable to equality of conditions. Among Catholics, religious society is composed of only two elements: the priest and the people. The priest alone is raised above the faithful: everything is equal below him" (ibid.). He adds that the living conditions among Catholics are more equal than in other religions, which is why, he concludes, Roman Catholics form the most democratic and most republican group in the United States.¹¹

Both Hegel and de Tocqueville believe that citizens' patriotism and religion are closely connected. A genuine religion can foster citizens' patriotism and thereby inspire them to meet their civic duties. The church is moreover a similar kind of ethical community as the state. Citizens who belong to a church thereby also adopt certain laws and customs which are beneficial to the state, such as for instance unselfish interest in the wellbeing of other members of the community. Let us now briefly outline Hegel's conception of the state as a political power and see whether ethical life is reflected in it as well.

11 Scholars disagree in their views on the influence of churches on the formation of the democratic republic in the USA. For instance, according to Huntington, of decisive importance was rather the Anglo-Protestant culture as such (Huntington 2005, 59–80).

4 The State as a Political Power

Hegel identifies the state with “the political state” (*PR*, § 273, 308).¹² He then defines it in more detail as a constitutional monarchy, which he views as an “achievement of the modern world” (*ibid.*).¹³ In this connection, he also deals with the issue of constitution. To start with, it must be noted that the state—as we already observed—is characterized by certain laws, customs, and institutions, as well as by the political disposition of its citizens. It is impossible to spell all this out in one written document, the constitutive law of a state.¹⁴

[S]ince the state, as the spirit of a nation (*Volk*), is both the law which *permeates all relations within it* and also the customs and consciousness of the individuals who belong to it, the constitution of a specific nation will in general depend on the nature and development (*Bildung*) of its self-consciousness; it is in this self-consciousness that its subjective freedom and hence also the actuality of the constitution lie.

PR, § 274, 312

Hegel rejects Napoleon's attempt to give a constitution to the Spanish. He says: “A constitution is more than a product of thought. Each nation accordingly has the constitution appropriate and proper to it” (*PR*, § 274 R, 312).¹⁵ If,

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- 12 “[Hegel] distinguished between the government and the state as a whole. He called the government the ‘strictly political state’ (§§ 273, 276) and reserved the term ‘state’ for the whole of a civilly and politically well organized society (§§ 257–271)” (Westphal 1993, 259).
- 13 Hegel does not list an example of a state that would have this form of government. Wood explains it as follows: “Hegel's rational state does strongly resemble Prussia, not as it ever was, but Prussia as it was to have become under the reform administrations of Stein and Hardenberg, if only they had been victorious” (Wood 1991, x).
- 14 Hegel's view here probably reflects the historical and political situation in the Prussia of his time. “In 1815, under the reform of Chancellor Hardenberg, King Friedrich Wilhelm III solemnly promised to give his people a written constitution. The political victory of the conservatives in the summer of 1819 ensured that the promise would never be kept” (Wood 1991, ix–x).
- 15 In his *Lectures on Natural Right and Political Science* (1817–1818) Hegel states: “Louis XVIII gave his people an inviolable constitution; the king, as highest authority, gave the constitution, incorporating in it all the liberal ideas the national spirit had developed since the time of the Revolution. The people were dimly aware of what they had to have ... That he gave the people the constitution was only the act of authority, but the content was the national spirit refined (*der geläuterte Volksgeist*). Now this charter is a beacon, and its basis is the form of permanence” (*LNR* 240 f. [§ 134 R]). According to Hegel, constitution should thus incorporate a ‘refined national spirit’ and correspond to the self-consciousness of the people. Cf. Siep 2017, 208.

however, a constitution already exists, it can be modified, though “this change could take place only in a constitutional manner” (*PR*, § 273 R, 312). Hegel advocates reforms undertaken in the spirit of right, not violence. It is also evident that in his view, reforms should be initiated by the political power itself.

Hegel then proceeds to analyze the nature of political power. He distinguishes between the legislative power, the executive power, and the princely power (*PR*, § 273, 308).¹⁶ Relations between these powers are, in his view, organic, that is, “they are justified not as independent entities, but only in such a way and to such an extent as is determined by the Idea of the whole” (*PR*, § 276, 314). At the same time, “the *individuals* who perform and implement [the particular functions and activities of the state] are associated with them not by virtue of their immediate personalities, but only by virtue of their universal and objective qualities ... For this reason, the functions and powers of the state cannot be *private property*” (*PR*, § 277, 314). Yet that was a state of affairs which, according to Hegel, characterized earlier feudal monarchies:

On the one hand ... the particular functions and powers of the state and civil society were vested in independent corporations and communities, so that the whole was more of an aggregate than an organism; and on the other hand, they [i.e. these functions and powers] were the private property of individuals, so that what the latter had to do in relation to the whole was left to their own opinion and discretion.

PR, § 278 R, 315

Hegel believes that the most important power in a state is the princely power. The prince embodies the sovereignty of the state, although “the particular functions and powers of the state are not self-sufficient and fixed, either on their own account or in the particular will of individuals, but are ultimately rooted in the unity of the state as their simple self” (*PR*, § 278, 315). The prince’s execution of his powers is regulated by the constitution and the laws, and moderated by the advice of ministers, though the ultimate decision is, indeed, up to the prince (*PR*, § 275, 313). The rights of the prince include the right to pardon, the appointment of officials, and the right to summon the assembly of the Estates. In international relations, the prince “has direct and sole responsibility for the command of the armed forces, for the conduct of relations with

16 In translating Hegel’s term “die fürstliche Gewalt,” I diverge from Nisbet who translates it as the “power of the sovereign” (*PR*, § 273, 308). I believe “princely power” is a term well in accordance with other scholars (e.g. Westphal 1993, 260; Siep 2017, 209), who emphasize that sovereignty is just one of the marks of monarchy, albeit the most important one.

other states through ambassadors etc., and for making war and peace and concluding treaties of other kinds" (*PR*, § 329, 365). The role of the highest advisers is to "submit to the monarch for his decision the content of current affairs of state, or the legal determinations made necessary by present needs, along with their objective aspects, grounds for decision, relevant laws, circumstances, etc." (*PR*, § 283, 326).

In this context, it may seem surprising that the prince assumes power based on the dynastic principle, that is, "by his natural *birth*" (*PR*, § 280, 321).¹⁷ One could perhaps explain this by Hegel's insistence that the prince should stand above the factional interests in the state's politics. That is why the manner of choosing the monarch must be different from that applied to other officials of the state. Moreover, Hegel adds: "In a fully organized state, it is only a question of the highest instance of formal decision, and all that is required in a monarch is someone to say 'yes' and to dot the 'i'; for the supreme office should be such that the particular character of its occupant is of no significance" (*PR*, § 280 A, 323). I believe this view should be understood as Hegel's concession to the contemporary situation in Prussia, which was a hereditary monarchy.

The executive power is then the branch of the state which ensures the "execution and application of the prince's decisions, and in general the continued implementation and upholding of earlier decisions, existing laws, institutions, and arrangements to promote common ends etc." (*PR*, § 287, 328, translation altered). Its activities are based on the division of labor in a similar fashion in which we find the principle in civil society, and the "*organization* of official bodies accordingly faces the formal but difficult task of ensuring that civil life shall be governed in a *concrete* manner from below, where it is concrete" (*PR*, § 290, 330). Hegel moreover supports the notion that in civil society, corporations should administer their own affairs, since that would strengthen citizens' patriotism.

The spirit of the corporation, which arises when the particular spheres gain legal recognition, is now at the same time inwardly transformed into the spirit of the state, because it finds in the state the means of sustaining its particular ends. This is the secret of the patriotism of the citizens in the sense that they know the state as their substance, for it is the state

17 Taylor notes: "This is one of those cases where the detail of Hegel's argument leaves one with a sense of the arbitrary. Granted that a social decision has finally to be promulgated by some person, it is not clear why realization of the modern idea requires that this be a hereditary monarch, and not a president, or governor-general, or whatever" (Taylor 1975, 440).

which supports their particular spheres and the legal recognition, authority, and welfare of these.

PR, § 289 R, 329

Persons are selected for public service according to the French model, i.e. based on the results of auditions where their knowledge (*Erkenntnis*) and abilities are tested. In other words, public servants are not chosen on the basis of their (for instance, aristocratic) birth or personal character (*PR*, § 291, 332). They are supposed to carry out their duties and should be provided with sufficient resources to resist the temptation of corruption (*PR*, § 294, 332 f.). Hegel also considers ways of preventing misuse of power by authorities:

The protection of the state and the governed against the misuse of power on the part of the official bodies and their members is, on the one hand, the direct responsibility of their own hierarchy; on the other hand, it lies with the legal recognition accorded to communities and corporations, for this prevents subjective arbitrariness from interfering on its own account with the power entrusted to officials, and supplements from below that control from above which does not extend as far as individual conduct.

PR, § 295, 334

And finally, Hegel addresses the issue of tasks of the legislative power. He rejects the idea of popular sovereignty:

Without its monarch and that *articulation* of the whole which is necessarily and immediately associated with monarchy, *the* people is a formless mass. The latter is no longer a state, and *none* of those determinations which are encountered only in an *internally organized* whole (such as sovereignty, government, courts of law, public authorities, estates, etc.) is applicable to it.

PR, § 279 R, 319

The legislative power consists of the prince, his ministers, and an assembly of the estates¹⁸ which, following the model of the British Parliament, ought to

18 Siep says: "One can say that Hegel's form of constitutional monarchy is closer to the 'German type' of the nineteenth century, according to which representatives of the people and the monarch share legislative power, than to the Western European or American ones in which, despite many differences, popular sovereignty manifests itself primarily in parliamentary legislation" (Siep 2017, 210).

consist of two houses. The Upper House is composed of the members of land-owning nobility, that is, of people who are "*entitled to such career by birth*" and do not stand for election (*PR*, § 307, 346). Since their interests coincide with the interests of both the princely power and civil society, they support both (*ibid.*). The Lower House, on the other hand, is made up of representatives of the other estates, i.e. farmers, traders, industrialists, as well as the representatives of the universal estate, by which Hegel means public servants. Their role is "to deliberate and decide on matters of *universal* concern," and it is assumed that they should understand these matters better than the people who elected them (*PR*, § 309, 348). Unlike Rousseau, Hegel believes that elected deputies should have a free mandate, specifying that their position is "accordingly not that of commissioned or mandated agents, especially since the purpose of their assembly is to provide a forum for live exchanges and collective deliberations in which the participants instruct and convince one another" (*ibid.*). Hegel rejects the principle of representation based on territorial allegiance or population size. On the contrary, he demands that the deputies be elected by the various corporations (*PR*, § 311 R, 350). This system should ensure that deputies are "*representatives not of individuals as a crowd, but of one of the essential spheres of society, i.e. of its major interests*" (*ibid.*).¹⁹

The aim of the gathered estates is not "to achieve optimum results in their deliberations and decisions on the business of the state *in itself*," but rather to ensure that "through their participation in [the government's] knowledge, deliberations, and decisions on matters of universal concern, the moment of *formal* freedom attains its right in relation to those members of civil society who have no share in the government" (*PR*, § 314, 351). Assemblies of the estates should be public and serve as an instrument of educating the public opinion. "The provision of this opportunity of [acquiring] knowledge has the more universal aspect of permitting *public opinion* to arrive for the first time at *true thoughts and insight* with regard to the condition and concept of the state and its affairs, thereby *enabling it to form more rational judgements on the latter*" (*PR*, § 315, 352).²⁰

Hegel's conception of the state as constitutional monarchy can be characterized as etatist: with respect to upholding the (unwritten) constitution and

19 "In Hegel's state, as in the constitutional proposals of Humboldt and Hardenberg, corporations are also the chief vehicles for popular political representation" (Wood 1991, xx).

20 "Hegel was aware of the relative political inexperience of his contemporary Germans. His civil and political institutions were designed to provide regular, publicly acknowledged, institutionalized channels for political education so that people would not act in political ignorance" (Westphal 1993, 262).

(written) laws, the prince is responsible to his conscience alone (*PR*, § 285, 327), while the highest state officials, that is, ministers, are appointed and recalled only by the prince (*PR*, § 283, 326), and are not answerable to the assembly of the estates. The assembly of the estates has a merely an advisory function and does not present the prince and the ministers with any laws for adoption. Moreover, citizens are represented in this assembly only if they are members of some corporation or local association. Citizens who want to criticize any misuse of political power in the state must present their grievance to the hierarchy of state officials or to local communities and corporations (*PR*, § 295, 334).

All in all, we can summarize our examination of the relation between the state and ethical life in Hegel's writing by noting that it is an original conception which remains highly relevant.²¹ Like de Tocqueville, Hegel was aware of the fact that particular laws, customs, and institutions can either support or subvert the state. Citizens do not live in the state in isolation, like individual atoms: they are incorporated in their social and political environment. In a modern state, the spheres in which they live consist of the family, civil society, and the state. Hegel quite rightly assigns the most important role to the state, since it provides the framework for the development of the two lower spheres. At the same time, however, he warns against applying the organizing principles of the family and civil society to the state: the state should neither be governed in a patriarchal fashion, nor should it become a utilitarian institution that would serve merely the interests of individuals.

Hegel also presents original ideas regarding citizens' patriotism and ways of strengthening it. He does not believe a state should demand from its citizens uniform political beliefs, as was the case in recent totalitarian regimes.²² What Hegel advocates is that citizens should have some awareness of shared values and goals. For instance in British subjects, this awareness is identified with their trust in the monarchy. At the same time, however, ethical aspects of the state must also be respected by the political powers, if they wish to succeed. We also saw that it is difficult to write down a constitution as the basic law of

21 Taylor offers a similar assessment of the relevance of Hegel's treatment of the relation between the state and ethical life; "The problem of recovering *Sittlichkeit*, of reforming a set of institutions and practices with which men can identify, is with us in an acute way in the apathy and alienation of modern society. For instance, the central institutions of representative government are challenged by a growing sense that the individual's vote has no significance" (Taylor 1975, 460).

22 For instance, Böckenförde uses the example of the Nazi state to illustrate the regress to unitary or uniform political thinking (Böckenförde 2017, 96–100).

a state. To wit, constitution should embody the national spirit and correspond to the level of development of self-consciousness of the people. Where either of these conditions is not met, the constitution must remain on the level of a 'thought product' (*Gedankending*). In a similar manner, ethical life in the state must also be respected by its officials, including the prince.

Finally, Hegel's thoughts on the importance of the political education of citizens seem to me to be also original. Hegel believes that in modern times, citizens tend to focus on the family or on furthering their economic interest in civil society. They are often uninterested and uneducated in political affairs. Hegel's thoughts on the political education of citizens should thus be viewed as tending in the right direction.²³

Translated by Anna Pilátová

Abbreviations of Hegel's Writings

- B* 1984. *The Letters*. Translated by Clark Butler and Christiane Seiler. Bloomington: Indiana University Press, 1984. Cited by page number.
- LNR* 1995. *Lectures on Natural Right and Political Science: The First Philosophy of Right, Heidelberg 1817–1818 with Additions from the Lectures of 1818–1819*. Translated by J. Michael Stewart and Peter C. Hodgson. Berkeley: University of California Press. Cited by paragraph '§' numbers. 'R' indicates a remark.
- PR* 1991. *Elements of the Philosophy of Right*. Edited by Allen W. Wood. Translated by Hugh Barr Nisbet. Cambridge: Cambridge University Press. Cited according to paragraph '§' numbers. 'R' indicates a remark which Hegel himself added to the paragraph. 'A' indicates an addition deriving from student lectures notes.
- VPR* 1974. *Vorlesungen über Rechtsphilosophie*. Edited by Karl-Heinz Ilting. Stuttgart: Frommann Verlag, 1974. Cited by volume and page number.

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²³ I would like to thank Professor Manfred Baum (Wuppertal) and my colleagues Marina Barabas and Holger Gutschmidt (Prague) for numerous inspiring discussions on the issue of Hegel's theory of state.

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“Sittlichkeit” in International Politics

Olga Navrátilová

In his *Elements of the Philosophy of Right*, in the section dedicated to international law, Hegel describes—alluding obviously to Thomas Hobbes¹—states as “the absolute power on *earth*” (*PR*, § 331R). The principle of sovereignty seems to be for Hegel the supreme principle in international relations, not being surpassed by any further institutionalized form of ethical life (*Sittlichkeit*), but sublated in history. In a similar way, Kant also uses in his polemic with Moses Mendelssohn the term “earthly gods” (*Erdengötter*) when speaking about states, but his tone is here rather ironical, and he requests that the states give up their godly ambitions by creating a worldwide federation. He calls upon states to comply with “the maxim always so to behave in their conflicts that such a universal state of nations will thereby be ushered in, and so to assume that it is possible (*in praxi*) and that it *can be*” (*Common Saying*, 8:313). In *The Metaphysics of Morals*, Kant specifies that although the “perpetual peace” is in fact an “unachievable idea,” it still serves as a principle determining the political maxims which states ought to accept in international politics and which direct them towards peaceful and just co-existence (6:350).

With regard to the experience of the twentieth century wars with millions of victims as well as to the persisting conflicts between the world powers over influence in various regions of the world, we usually tend to appreciate Kant’s moral appeal rather than Hegel’s insistence on the principle of sovereignty. Hegel’s critique of Kant’s proposal provokes controversy among his interpreters and represents an obstacle even for those who find Hegel’s political philosophy in other respects adequate and inspiring. It is not clear whether Hegel declines the idea of perpetual peace as such, or whether he merely considers Kant’s treatise on the topic insufficient. Among contemporary scholars Adriaan T. Peperzak holds the first view, Klaus Vieweg the second. Peperzak accuses Hegel of confusing the factual observation that there is no praetor above the sovereign states with a conceptual necessity. Hegel’s critique of moral obligation, *Sollen*, in the sphere of international relations is unconvincing

1 Cf. the biblical quotation from *Job* 41:24 that Hobbes uses at the frontispiece of his *Leviathan*: Non est potestas Super Terram quae Comparetur ei. (“Upon earth there is not his like.”)

since in other contexts he considers it to be a genuine expression of spirit's rationality (Peperzak 2001, 584). Hegel thus betrays his own principles when he remains at the level of nationalism and does not pass over to cosmopolitanism based on the idea of humanity. On the contrary, Vieweg—referring to Ludwig Siep (1995)—assumes that Hegel in fact followed Kant in the transition from nationalism to cosmopolitanism, but unlike Kant paid greater attention to the cultural determinations and to the limits that Kant's proposal had to face (Vieweg 2012, 496). While Peperzak derives his judgment about Hegel's nationalism from Hegel's insistence on the principle of sovereignty as the supreme principle of international relations, Vieweg takes into consideration the complexity of the process of mutual recognition included in the notion of sovereignty, which indicates that Hegel surpassed the atomism of national states.

With regard to this, I would like to proceed in my study as follows: First, I will introduce Hegel's analysis of international relations from *Elements of the Philosophy of Right*. There I will make use of the structural analogy between this section and the previous levels of Hegel's philosophy of right. Subsequently, I will ask the two questions mentioned above, namely whether Hegel's prevalent position is the position of nationalism or of cosmopolitanism, and whether he refuses the idea of perpetual peace on principle. My claim is that Hegel regards international relations as encumbered by ambiguity that cannot be overcome on the level of "objective spirit." This is the very ambiguity I want to accentuate to a larger extent than the two interpreters mentioned above. In my view, it is not necessary to see this ambiguity as a failure of Hegel's political philosophy, as Peperzak assumes (Peperzak 2001, 577), but merely as an exposition of the limits inherent in the realm of objective spirit as such.

1 Ambiguity of International Law

The ambiguity which burdens international relations as analyzed in *Elements of the Philosophy of Right* stems from the fact that the particular wills of sovereign states are only insufficiently mediated by the general will. The norms governing the sphere of international relations are void of such institutional guarantees which would lead to transformation of the state of nature into the political state. The situation thus resembles any other level of normative relations analyzed by Hegel in which the particular will takes precedence over the general will (i.e. the situation in which the normative structure stays abstract and is not transformed into a concrete and institutionalized form of ethical life). These levels are the level of abstract right, of morality and of civil society.

In order to expose the ambiguity of the sphere of international relations, I want to point out this resemblance.

1.1 *The Lack of a Supranational Sovereign Power*

The first principle of international law that Hegel mentions is the principle of sovereignty, which is coupled with the principle of recognition—or, better said, one principle implies the other (*PR*, § 331, incl. remark). Just as an individual can attain legal subjectivity only when she is recognized as a subject of law within the legal system, a certain national community can attain the status of a state only when it is recognized as such by other states (as we have recently seen in the case of Catalonia). This recognition presupposes that states consider themselves as equal (at least *de iure* if not *de facto*), that is as "states." For this reason, Hegel extends the formal dimension of recognition by the material one, as Klaus Vieweg points out (Vieweg 2012, 493).² Hegel characterizes this substantial prerequisite of recognition as "content," "constitution" and "condition" (*PR*, § 331). He does not give more detail on this requirement in *Elements of the Philosophy of Right*. In his lectures from the winter semester 1818/19 he states that there needs to be at least a certain form of inner organization that enables the formation of general will: "There must be the possibility to enter into legal relations" (*Ilr* 1, 339, my translation). Hegel here, however, adds that even "the different degree of ethical life," i.e. the different level of cultural and political development may constitute an obstacle to recognition (as was the case in the attitude of European states toward the Indian empires of Central- and South America [*ibid.*]).

Mutual recognition between sovereign states, therefore, establishes the legal relations and attains its concrete form—similarly to the recognition of persons at the level of abstract right—with the states entering into contracts or treaties (*PR*, § 332, see also *Enc. III*, § 547). This brings about the formation of the system of international law with its fundamental principle *pacta sunt servanda*, "treaties should ... be observed" (*PR*, § 333). Thus the legal state is established among the states which does not, though, bring the state of nature to an end due to the absence of a unifying sovereign power (*sunt servanda* is a deficient mode of normativity). The ambiguity of this situation has its roots in the persisting coexistence of both the state of mutual recognition as expressed

2 Vieweg claims that this "material" or "substantial" aspect of recognition opens the possibility of a stable world peace order, although he admits that such a concept of recognition can be found in Hegel only to some extent (Vieweg 2012, 496, see also *ibid.*, 493–495). The conviction that only a specific form of government, namely the republican, may lead to peaceful coexistence of the states is held by Kant (see *TPP*, 8:349–353).

in legal relations as well as the state of nature which does not exclude war as the mean of dealing with conflicts (*PR*, § 334).

According to Hegel, Kant's idea of worldwide federation does not show the way out of this ambivalent state since it is encumbered by the same ambiguity. Federation should exist as an outcome of the political contract in which the fulfilment of obligations depends entirely on the good will of the contracting parties (*PR*, § 333 R). The reason for the critique of Kant's concept is the same as in the case of social contract theories, which do not adequately reflect the nature of general will as incorporated in the state (see *PR*, § 75, § 258 R, § 278 R). There is inconsistency in such a notion of the state according to which the state exists as the result of the voluntary unification of particular wills when, at the same time, the state should enforce the fulfilment of the obligation stipulated in the social contract even against the will of any of the contracting parties. Hegel pays attention to the fact that the contract is a fundamental concept of private law and cannot be transferred to the sphere of public law. The unity of particular wills in a contract is contingent and the aim of such unification is an acquisition of a concrete thing, service, advantage and the like by the contracting parties (eventually by a third-party). The existence of the legal system, i.e. of a specific form of general will, is the prerequisite and, at the same time, the by-product of such unification. However, for the particular will it is never an end in itself. In addition, its enforcement in individual cases does by no means belong to the sphere of private law. For this reason, the state that would be comprehended as an outcome of such a contract would have no real unity and no real power in enforcing the law. It would be viewed only as the means for the particular ends of various individuals or social groups, not as an end in itself.³

It could be objected that Kant succeeded in avoiding the deficiency of social contract theory when he—with the use of Rousseau's concept of “*volonté generale*” (as distinguished from “*volonté de tous*”)—transformed the idea of general will produced by the contingent agreement of particular wills into the notion of the unconditionally binding moral law. *Exeundum e statu naturali*, that the state of nature ought to be left, is for Kant the unconditional imperative of practical reason (*MM*, 6:307), not an outcome of pragmatic deliberation of the advantages of the political state in comparison with the miseries of the state of nature. According to Hegel, though, it still does not suit the purpose. Even though the general will is seemingly free of contingency, it lacks an

3 Such understanding of the nature of the state Hegel calls “the state of necessity and of the understanding” (“Not- und Verstandesstaat,” *PR*, § 183).

important feature: concreteness, determinateness and, therefore, reality. The general will gains this feature only when incorporated in the organization of the state, supported by the complex structure of culturally bound customs and institutions. The inner constitution of the state enables the creation of positive norms as well as their application in individual cases by legitimate authorities whose decisions are enforced even against the will of individuals. On the contrary, general will in the form of mere obligation, *Sollen*, remains abstract. This applies also to the sphere of international legal relations, where the content as well as enforcement of such abstract obligation is reliant on the will of particular states and is thus arbitrary (*PR*, § 333, incl. remark).

For that reason, the only way out of the ambiguity that rules in the sphere of international relations, a way out which would exclude war as the legitimate mean of dealing with disputes, would be if the states renounced their sovereignty and unconditionally subordinated themselves to a higher authority, thus creating a new form of institutionalized ethical life. This would mean, in fact, that they would cease to exist as states. No state, nevertheless, is entitled, to take such a step. Even Kant hesitates over whether one should wish such a worldwide state instead of a voluntary union of states in the form of a federation. He fears that such a supranational worldwide state would hardly avoid the danger of becoming tyrannical (*Common Saying*, 8:310–311).⁴ Hegel is far from making such a proposal, and he limits himself solely to observing the ambiguity of international relations based on mere obligation without suggesting any solution.⁵

1.2 *Tension between Welfare and Morality*

The fact that moral obligation constitutes no sufficient ground for securing the peaceful coexistence between states becomes even clearer, when we read the

4 On the contrary, only two years later Kant in his treaty *Toward Perpetual Peace* sees the "state of nations" as the only way "in accordance with reason" to surpass the latent state of war between states. However, since states are not keen to take such a step, he proposes the formation of a league that would avert wars as the "negative surrogate" which "can hold back the stream of hostile inclination that shies away from right, though with constant danger of its breaking out" (8:357). The reason that there can be no worldwide state is not the danger of tyranny, but the unwillingness of nation states to give up their sovereignty.

5 A good example of the ambiguity represents, according to Hegel, the Holy Alliance. In his lectures from 1822/23 he states: "The other thing is that the states that are in this alliance can all the same disengage from it, so that the alliance remains mere obligation (*Sollen*) and each state has the right to dissociate when it feels strong enough. Sovereign states ought to agree on an alliance which they ought to acknowledge as the judge over them. To be sovereign, however, means to have no other judge than oneself, and therefore, there is a contradiction in the alliance itself" (*Ilt* 3, 835, my translation).

respective paragraphs about international law in *Elements of the Philosophy of Right* through the prism of Hegel's critique of the position of morality.

The principle of sovereignty, which establishes the existence of a state as a subject of international law, is followed in Hegel's analysis of international relations by the principle which makes the welfare of a state the supreme end of all its actions in the international sphere (*PR*, §§ 336–337, incl. remark). In the chapter about morality in *Elements of the Philosophy of Right*, the idea of one's own welfare is the end in which an individual unifies all his partial intentions (§ 123); this applies also to the intentions of states. States do not conclude treaties and abide by them because of their high respect for the obligation, but because they see these treaties as the means of promoting their welfare.

In the chapter about morality, the welfare of an individual—as the principle of his particularity—stood in potential conflict with the general character of legal norms; this conflict was sublated in the notion of good together with the notion of moral duty (§§ 129–130). In the notion of good (which bears features of Kant's "highest good" [cf. *CPR*, 5:110–111]) particular wills find their confirmation and the fulfilment of their individuality by unifying themselves with what is universal. In this way, the harmony of divergent particular wills ought to be secured and the congruence of justice and welfare achieved. Nevertheless, due to its emptiness, the idea of good could accomplish this task only insufficiently. As the consequence of its indeterminateness, it is the arbitrariness of particular wills themselves, and of their ideas of what is good, which determines the content of the notion of good in concrete situations. In Hegel's analysis, particular wills first disguise, even for themselves, their private interests by their confidence that they follow noble purposes, later they throw this pretense away and openly promote their individuality to the position of universality and identify the good with their vanity (*PR*, § 140, incl. remark). The conflict between the particular interests of an individual and the universality which ought to precede these interests is in the course of *Elements of the Philosophy of Right* sublated only at the level of ethical life, namely in the family, institutions of the civil society, and finally in the state. There the interests of individuals are in harmony with the common interests not at the abstract level of morality, but in concrete forms of shared practices, positive norms and institutions. Only in these forms the notion of good and the notion of duty attain their concrete content. In the state ruled by law, the idea of justice is made real and the welfare of individuals is ensured; there is no other supreme good for which we should strive and for which we may hope (see *PR*, § 336).⁶

6 In the lectures from 1823 Hegel argues: "The welfare of individuals can be in conflict with the general laws. There is nothing superior to the welfare of a state, what is its welfare, it is its

It seems, though, that for Hegel the described conflict persists in the sphere of international relations in the form of the conflict between morality and politics (see *PR*, § 337, incl. remark), concrete interests of a particular state and the moral imperative which subordinates these interests to the idea of justice. Kant in his treatise *Toward Perpetual Peace* takes his stance on the side of justice; the political wisdom of princes and diplomats consists in deliberating on the way in which such an imperative of perpetual peace, attainable only by the means of justice, could be applied in particular situations (see *TPP*, 8:375–379). In accordance with the general concept of his practical philosophy, Kant adopts the formal principle as the principle which should guide the deliberation of an individual not only as the private person, but also as the political leader. Hegel applies here, therefore, the same objection that he raises against Kant's practical philosophy as such: the abstractness of the moral law in the form of formal principle makes it unsuitable for guiding action in concrete situations (cf. *PR*, § 135, incl. remark). The only concrete principle in the sphere of international relations, where the supranational institutionalized forms of ethical life are absent, is the welfare of one's own state: "Its end in relation to other states and its principle for justifying wars and treaties is not a universal (philanthropic) thought, but its actually offended or threatened welfare in *its specific particularity*" (*PR*, § 337).

Hegel's skepticism about the possibility of the application of moral perspective in the sphere of international politics becomes more understandable if we examine the form which the moral conscience takes in the concluding paragraph of the chapter about morality. There conscience fills the empty notion of good with its own arbitrariness (see *PR*, § 140, incl. remark). Even though it pretends that it promotes sublime ideals, it promotes in fact only its own self. The ideals that are promoted in international politics—in Hegel's days as well as today—run into the same danger. The protection of human rights stemming from the idea of humanity, the protection of the rights of national or religious minorities in other countries, the promotion of democracy (or also of various versions of socialism), securing peace, all these noble ideals frequently serve as mere pretext for interventions which protect primarily the geopolitical and economic interests of individual states. It does not mean that the realization of these ideals—or at least most of them—would be in itself undesirable. The

right" (*Ilt* 3, 838). At the level of individuals, it is in extreme cases possible to demand from someone the complete sacrifice of his welfare for the higher, ethical principles. It may not be assumed, though, that a state could be entitled to make similar sacrifice. At the same time, this would be the only way how institutionally secured authority, superior to any state, could come into existence.

difficulty lies in the fact that the particular states which cannot ignore their own interests are those who decide about the means and the ways of this realization.

Even though there is no institutionalized form of ethical life which would overcome the conflict between moral principles on the one hand and the interests of particular states on the other hand, Hegel takes into account another form of normative universality, which influences relations between states, namely “mores,” “customs” or “practices” (“Sitten”; *PR*, § 339, *Enc. III*, § 547). These customs do not necessarily have, it would seem, the form of obligations stipulated in treaties, and neither do they regulate solely the sphere of international politics, but they “are universal aspects of behavior which is preserved under all circumstances” (*PR*, § 339). As such, they are the outcome of cultural development and reflect a specific, culturally and historically bound worldview and understanding of the role of an individual as well as of society. Hegel relates these customs to two spheres of international relations: They may moderate the cruelty and animosity against enemies during war while, during the peace, they regulate the behavior of states towards non-citizens in private affairs (see *PR*, § 339, incl. remark, see also *Enc.*, § 547). In both situations, the customs apply not to the relations between states, but rather to the relations between a state and a foreigner. In this respect, they reflect such understanding of an individual that differentiates between someone understood as a private person and a human being on the one hand, and as affiliated with a foreign, sometimes even inimical, state on the other hand (cf. *PR*, § 338, cf. also § 328, incl. remark). This understanding is not universal, but it is an outcome of cultural development which Europe has undergone regarding the view of the relationship between individual, society and state. These culturally bound customs indicate that Hegel takes account, at least in some respects, of the cosmopolitan idea.

1.3 *International Civil Society*

The next level of relations characterized by the precedence of particularity over universality is in *Elements of the Philosophy of Right* the level of civil society. There the promotion of one's own interests leads to the formation of a system of mutual economic dependency that gives rise to new forms of universality, partly institutionalized (administration of justice, police and corporations).

In the treatise *Toward Perpetual Peace*, Kant claims that commerce can be of significant help on the road of humanity towards peace, since it benefits more from peace than from war. The promotion of one's own interests hence contributes to the establishing of universal harmony: “In this way nature guarantees perpetual peace through the mechanism of human inclination itself”

(*TPP*, 8:368). Hegel makes use of this mechanism of the "invisible hand," which creates common good out of selfish interests, in his analysis of civil society. Nevertheless, at the level of international relations he surprisingly pays almost no attention to the fact of economic interconnectedness, which could give rise to new forms of interconnectedness also at the institutional level.⁷ In our days, perhaps far more than in Hegel's, we see, however, that economic interconnectedness leads in the international sphere to the formation of various institutions, as well as to the development of international public and private law. We can observe in this institutional development an analogy with the development of civil society at the intrastate level. There the institutions played, according to Hegel, besides other things, a role in promoting the ethical attitudes of individuals by bringing into accord their individual interests with the common good (even though the full development of these institutions was secured only by the state). We can only hope that the institutions in the international sphere might have a similar effect. (In the course of globalization, we can observe, besides other things, how the growing significance and power of supranational economic corporations reveals the necessity of cooperation among states at the legal and institutional level. Individual states in the globalized world can only barely control by themselves the excesses of civil society, which has expanded in the international sphere.)

In the international sphere as seen by Hegel, the role of the invisible hand does not play the part of the "spirit of trade," as in Kant (*TPP*, 8:368), but the "spirit of the world" (*PR*, § 340). The highest form of universality in the realm of objective spirit is history, in which the particularities of individuals, states and cultures are sublated in a unitary development of humankind. Only history—and not worldwide federation—has the authority to decide conflicts between states (see *PR*, §§ 339 R, 340, *Enc.*, § 548). From the perspective of history, even the welfare that the particular states promote as their only and legitimate end reveals itself as contingent and finite. Before this court of judgement, every particularity is condemned and, at the same time, elevated to the sphere of universality.

2 Cosmopolitanism or Nationalism?

Does the fact that Hegel views the state as the supreme institutionalized form of objective spirit imply that he adopts the position of nationalism and refuses

⁷ Hegel's lack of interest in the economic dimension of international relations is pointed out by Adriaan Peperzak (2001, 580).

the idea of cosmopolitanism, as Adriaan T. Peperzak objects (Peperzak 2001, 585, 593)?

The idea of cosmopolitanism is inseparable from the idea of the equality of all humans, which bestows human dignity and freedom on all, irrespective of the cultural, national and other differences. Even though Hegel delivers an occasional philippic against the “abstract” idea of equality (cf. e.g. *PR*, § 5, cf. also §§ 49 R, 200), which he sees as suppressing any particularity and leading to the worst forms of tyranny, he acknowledges the importance of this idea especially in the sphere of law as well as that of morality (see *Enc.*, § 539 R).

As Hegel observes, people are not equal “by nature,” but the inclusion of all humans under one category of “human being,” followed by the recognition of their fundamental freedom, is the product of cultural development (*ibid.*), in which the idea was first formulated in the sphere of religion and philosophy. From there it pervades customs and attitudes and takes institutionalized form in legal norms guaranteed by the state. Such understanding is then also expressed for example in the already mentioned requirement that private persons and the institutions of private life should be protected in the situation of war even by the enemy—a requirement that Hegel relates to European cultural and political development. If we leave aside the controversial question about the possibility of perpetual peace and the necessity of war, Kant’s view of the content of so-called cosmopolitan law, which presupposes the recognition of the humanity of people and the acknowledgment of their legal subjectivity in private affairs irrespective of their nationality (see *TPP*, 8:358, *MM*, 6:352–353), does not really differ from Hegel’s view. Unlike Kant, though, Hegel underlines the cultural and historical background of such law.

A rather paradoxical fact comes into focus in Hegel more than in Kant, namely that the values which are reflected in cosmopolitan law, primarily those of equality and respect for each individual, are an outcome of particular cultural development and as such are not commonly shared. The claim about their universality, which is inherent to them, may thus be challenged. It does not follow that Hegel would consider them for that reason an illusion. He maintains the teleological unity of human history, which he views from the absolute position that allows him to make universal claims. Still, the ambiguity, which is characteristic of international relations, becomes apparent here as well. The claim about the universality of specific values, which are reflected in moral, ethical or legal norms, may be questioned from different cultural positions; their enforcement by some states may be viewed as the mere pretext

for promoting their economic, cultural or other interest or at least as a form of paternalism. This tension—which Hegel indicates only briefly⁸—is the problem, which Euro-American international policies, setting for themselves as one of their tasks the promotion of human rights and democracy, have to face, if they do not want at the same time to yield to the policies of autocratic or even totalitarian states that use reference to cultural distinctiveness as an excuse for cruelty, oppression and aggression.

3 Toward Perpetual Peace?

We can see from the exposition of Hegel's understanding of international relations that he pays greater attention than does Kant to their ambiguous nature. Hegel reveals the vulnerability of Kant's idea of perpetual peace in the form of a normative objective that should determine the decisions of the political leaders. By focusing on the analysis of problems and conflicts, this critique overshadows Kant's positive program, but still does not necessarily exclude the idea of perpetual peace as such. Nevertheless, Hegel criticizes Kant's concept of perpetual peace in the *Elements of Philosophy of Right* not only for the reasons described above, but also because he insists on the ethical significance of war (§ 324 R).⁹ Kant too maintains the importance of war for the development of human civilization, but, according to him, war was an instrument which nature once employed for specific purposes, but which is now out of use (see *Conjectural Beginning*, 8:121, see also *CPJ*, 5:433, cf. Siep 1995, 356–363). On the contrary, Hegel's claim about the ethical dimension of war seems to lead to the conclusion that perpetual peace as such cannot be viewed as the desirable aim

8 Hegel mentions in this respect the failure of Napoleon's intention of establishing a constitution in Spain. The constitution is a result of long cultural development and reflects values which this development has brought about. The constitution cannot be imposed from outside, "it is the work of centuries, the Idea and consciousness of the rational, in so far as that consciousness has developed in a nation" (*PR*, § 274A). At the same time, the cultural development of different nations has a common goal, namely the realization of reasonability, so that the differences seem to lie solely in the different stages of this development.

9 This view Hegel defends also in his earlier writing (see *PhS*, 552–553, cf. also *SEL*, 147–149). As for Hegel's concept of war, see the well-known article of Shlomo Avineri *The Problem of War in Hegel's Thought*. Avineri considers Hegel's claim about the conceptual necessity of war in today's situation problematic, nevertheless, he defends Hegel against such misinterpretations which accuse him of supporting militarism and nationalism (see Avineri 1961).

of history. Does Hegel exclude the idea of perpetual peace from his practical philosophy on principle?

The ethical attitude of an individual lies, according to Hegel, in her readiness to renounce her particularity on behalf of what is universal, as it is the only way freedom can constitute itself. Only the state grants space for the development of freedom—not the paralyzed inner freedom fleeing the world, but freedom that is realized in interpersonal and social relations. In the situation of war where the state expects from its citizens the sacrifice of property, work and even of life, the paradoxical nature of freedom itself is revealed: only he that is willing to renounce himself can be free (see *PR*, § 324, cf. *PhS*, 114). Equally, it becomes manifest that the state can maintain its sovereignty—and thus the freedom of its citizens—only when it is placed above the particular and often diverging interests of individuals and groups which threaten its unity and thus the freedom of all. The situation of war reveals the true nature of the state as an ethical whole, whereas in times of peace one can easily view the state only as a means for securing life and property (see *PR*, § 324 R), as followers of social contract theory did. It seems that at least for that reason Hegel considers war to be a necessary moment of ethical life, which makes perpetual peace undesirable or even unthinkable.

We may object that if a person dies she is free no more. We may also ask, whether it is only war which plays such a pedagogical ethical role with regard to the state? In the addition to § 432 of *Encyclopaedia* Hegel maintains that the individual who lives in a free society—the society under the rule of law guaranteed by the state—is in no need of proving his freedom by the fight necessary in the state of nature, but he is as such recognized by the society and is brought up in accordance with his freedom. Recognition enforced by violence takes in the modern society the form of recognition guaranteed by law. May we not in a similar way argue that humans as beings endowed by reason are able to comprehend the ethical nature of the state without experience of war? Does not long historical experience teach us that peace secured by the rule of law offers a better opportunity for promoting freedom than does a state of permanent insecurity and the threat of violence, as Ludwig Siep points out (Siep 1995, 377) and as Kant already claimed (see the section “On the guarantee of perpetual peace” in *TPP*, 8:361–369)?

Hegel defends the necessity of war in the remark to § 324 of *Elements of the Philosophy of Right*, where he argues that the negativity and transience, which belongs to life and to this world, loses in war its contingent nature. Death, which in other respects is ethically irrelevant, gains in this case an ethical dimension and is endowed with significance. We may perhaps still agree that to sacrifice one's life when defending the state, which for its citizens represents the

guarantee of their free life, may be meaningful.¹⁰ Overall, though, Hegel's further unspecified justification of war and of the necessity of sacrifice lost its power to convince at the latest in the trenches of World War I and since then has rather provoked indignation. It is, on the one hand, too easy to criticize Hegel's attitude towards war by simply observing that we see things differently now without coping with his argumentation. On the other hand, Hegel himself understands history as the process of learning and from this point of view, the experience acquired by the Western civilization in the last century needs to be taken seriously. For that reason, I would like now to use Hegel's claims about persisting ambiguity and contingency in the sphere of international politics in order to come to the conclusion that he himself does not really point out, namely to read them as a warning against the utopian illusions of political ideologies.

The ambiguity, which according to Hegel makes it impossible to exclude war from relations between states, is not restricted only to the realm of international politics; its roots reach deeper. The ambiguity lies in the nature of objective spirit as such. On the one hand, history tends, according to Hegel, towards the overcoming of contingency, towards replacing the rule of violence with the rule of law, the irrationality of arbitrariness with the rationality of the normative system. On the other hand, this fact does not imply that contingency, irrationality and some forms of violence would completely lose their place within the sphere of objective spirit. Even in the state ruled by law, some court's decision in the hierarchical judiciary system needs to be the final one, however encumbered by contingency. Similarly, the acts passed by legislation are not solely the results of the impartial deliberation of the legislative body, but also the compromises resulting from the advancing of contingent interests by various groups. Some form of violence or coercion remains necessary not only in bringing up the child, but also in the relations between an individual and the society, as the criminal law attests. The objective spirit is the spirit that effectuates itself in the realm of finitude, particularity and contingency. Inherent to this realm is not only history, which is the last form of the objective spirit, but also the end itself towards which history tends.

This implies, then, that also particular states, as the effectuations of objective spirit, participate in its finitude and transiency (see *PR*, § 340). Hegel's characterization of world history as the world's court of judgment—a formulation borrowed from Schiller's poem *Resignation*—is sometimes read as his affirmation of the factual state brought by the victorious powers in history and

10 In this sense Hegel limits in the lectures of 1818/19 the necessity of sacrifice to the situation of external endangerment of the state, although even here he points out that particular interests tend to weaken the unity of the state in the time of peace (see *Ill* 1, 338).

thus the final victory of facticity over reasonability.¹¹ This is true in the sense that there are, according to Hegel, no criteria for judging past and present actions, deeds and processes, which would be transcendent in relation to history, no last judgment at the end of days. Each epoch regards history as well as the present from its point of view. Its perspective is therefore not ahistorical, but determined by previous cultural development. (In this way, we consider for example slavery to be now not only an obsolete institution, but also an institution which was perhaps deplorable even in its own times. We thus pass judgment over the past from our perspective. Is this, nevertheless, the perspective of the winners?)

The judgment on the world which history pronounces reveals the transiency and finitude not only of every human being, but also of particular states, nations and cultures (see *PR*, § 340). Finitude is the fate of each particularity and the insight of history makes it clear to us. Similarly, as in Schiller's poem, the awareness of this fact does not necessarily lead to resignation—on the contrary, it opens the eyes to the present and to the world in which we live. What it leads to, nevertheless, is an appropriate degree of skepticism, namely that skepticism which does not close its eyes to the ambiguity of the world, but enables a search for realistic solutions and prevents us from pinning exaggerated hopes on political utopias, which Karl Löwith in his famous study sees as the expressions of secularized eschatological expectations (Löwith 1957).

4 Conclusion

The ambiguous nature of the realm of international politics arises from the tension between the normative claim of *Sollen* and mere pragmatism, which puts national interests first. Hegel's critique of *Sollen*, which he views as a deficient mode of normativity, and his emphasis on the welfare of one's own state as the supreme—because the only concrete—principle for actions in the international sphere may create the suspicion that Hegel broke this tension and fell into mere pragmatism. In that case the reproach of nationalism would after all be valid. In the paragraphs dedicated to the problems of international law, Hegel does not really help the reader to overcome this suspicion. Adriaan Peperzak and Klaus Vieweg, who were mentioned in the introductory

11 Such reproach against Hegel's sublation of the ethical sphere in world history is brought e.g. by Herbert Schnädelbach: "Hegel's practical philosophy knows solely the legal norms and the institutional duties and above them the boundless normative power of world-historical facts" (Schnädelbach 2000, 352).

part of this study, adopt different strategies on how to deal with this problem. Both agree that this nationalistic pragmatism does not correspond with the general plan of Hegel's political philosophy. While Adriaan Peperzak exposes this discrepancy (see Peperzak 2001, 587, 592–594, 610–611), Klaus Vieweg, by embedding these paragraphs into the context of the whole of *Elements of the Philosophy of Right*, develops a positive program of overcoming the ambiguity by showing the necessity of progress towards new forms of ethical life in the international sphere (see Vieweg 2012, 496–499).

My ambition is not to decide which approach is more adequate, since I assume that Hegel's ambivalent text enables both ways of reading. If it is correct, though, that the ambiguity is inherent in the realm of objective spirit, then pragmatism should never prevail as the only principle present in international politics. I agree with Adriaan Peperzak that *Sollen*, even though criticized by Hegel for its ambiguity and possible arbitrariness, is a form of normativity, which represents an inseparable moment of practical reason (Peperzak 2001, 584). Hegel's claim that the role of philosophy is to look back and not to build any castles in the air should not be understood in such way that would deprive reason of its inherent normative dimension. As practical, reason commands that what is recognized as reasonable should be put into effect. Hegel himself is aware of the dynamic relation between *Sein* and *Sollen*. On the one hand, he repeatedly claims that philosophical reflection should bring reconciliation with the world as it is. In the addition to the § 234 of *Encyclopaedia Logic* he states:

The reconciliation consists in the fact that the will, in its result, returns to the presupposition of knowing, that is to say, it consists in the unity of the theoretical and practical idea. ... The unsatisfied striving disappears if we know that the final purpose of the world has been brought about and to the same degree eternally brings itself about.

Enc. I, § 234A

This eternal “bringing itself about”—the inherent task of practical reason or of objective spirit—is expressed in the tension between *Sein* and *Sollen*. That is why Hegel, on the other hand, continues: “This correspondence of is and ought, meanwhile, is not a frozen and inert correspondence; for the good, the final purpose of the world, is only in that it produces itself again and again” (ibid.). The latent state of war in which the mutual relations between states have the character of mere “ceaseless turmoil” of particular interests and passions (*PR*, § 340) may hardly be conceived as reasonable, since it puts particularity above universality and replaces practical reason with blind fate. It is rather the state

of peace, the state of mutual recognition, which should be eternally brought about, despite Hegel's claims about the necessity of war.

How can we, however, escape Hegel's objection that what is unachievable—in this case perpetual peace—cannot reasonably be the object of the will? We may argue that the objective of political deliberations is not perpetual peace as such, but peace here and now, which should be viewed as if it were to last forever (e.g. peace concluded without any ulterior motives, as Kant requires [see *TPP*, 8:343–344]). After all, the purpose of Kant's idea of perpetual peace was not to dream about a remote future, but to determine the decisions of political leaders in concrete situations with regard to all their ambiguity. With respect to this present decision, it is indifferent if there ever will be a state of everlasting peace.

Considering this, I also see as too rash Hegel's claim that there is no conflict between politics and morality in the sphere of international politics, and that the only concrete objective of governmental decision may be the welfare of one's state. That the conflict between justice and welfare is not definitively solved at the intrastate level, as Hegel suggests, but is transposed to the international level, becomes especially evident in today's world with its immense differences between rich and poor, powerful private companies or individuals and often powerless states, endangered by private interests from outside as well as from inside. The welfare of an individual state is a particular principle and as such, it can be in conflict with the welfare of another state. The notion of "good" consisting in the harmony between justice and welfare has neither become oblivious to the development of objective spirit at the international level (even for Hegel, as is evident from the above-mentioned quotation), nor can it be identified with the welfare of one's own society, since the notion would lose its universal character and become in itself contradictory. Moreover, it cannot be overlooked that individuals who participate in the formation of the general will (not only political leaders, but in democratic countries also voters) do not cease to be moral subjects. However much the notions of what is good and just may differ and be culturally determined, and however seriously we must take Hegel's warning about the dangers of applying the moral point of view in the realm of politics, it is not possible to restrict moral normative claims only to the private sphere of individual charity. The fact that these moral claims can be, due to the ambiguity of the world of international politics, transformed only insufficiently into the institutionalized forms of ethical life does not deprive them of their normativity.¹²

12 This work has been supported by Charles University Research Centre program No. 204053.

Abbreviations

Hegel's Writings

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Modern Philosophy and Philosophical Modernity: Hegel's Metaphilosophical Commitment

Alberto L. Siani

1 Introduction

In order to be able to properly assess limits and potential of Hegel's concept of modern ethical life, this paper argues, it is preliminarily necessary to discuss reasons and implications of his metaphilosophical commitment to philosophy as the only fully adequate form of reconstruction, justification, and critique of modern ethical life. Hence, I will not directly address Hegel's theory of modern *Sittlichkeit*, but rather attempt to offer some remarks about his intention to overcome philosophy into actual knowledge as an essential component of his view of modernity, including modern *Sittlichkeit*. To this aim, I will begin by focusing on two famous sentences from the first pages of the Preface to the *Phenomenology of Spirit*:

- 1) "To help bring philosophy closer to the form of Science, to the goal where it can lay aside the title 'love of knowing' and be *actual* knowing—that is what I have set myself to do" (*PhG*, 3/ *GW IX*, 11).
- 2) "Besides, it is not difficult to see that ours is a birth-time and a period of transition to a new era" (*PhG*, 6/ *GW IX*, 14).

These two sentences contain two very general statements: the first, a planned contribution to the self-fulfilment of philosophy, which becomes in its scientific form actual knowledge, and the second, the transition to a new historical phase. Briefly, the first is about the form and function to be taken up by philosophy in modernity, and the second is about modernity itself. Taken and interpreted in their connection and context, they provide the appropriate starting groundwork for the investigation of Hegel's metaphilosophical commitment to philosophy.¹

1 Given the topic at hand, one may wonder why I have chosen the *Phenomenology*, and not some later Hegelian works or lectures, as a basis for my argument. I have done so both for philosophical reasons, insofar as the *Phenomenology* formulates Hegel's commitment in a more direct and programmatic way than e.g. the *Encyclopedia of the Philosophical Sciences*,

In the following, I begin by arguing that Hegel's general project of the self-fulfilment of philosophy is to be read as an answer to the actual need of the modern world, that is, the need to philosophically found and establish the principle of subjective freedom. Hence, the structural connection between the two statements is made explicit in and through Hegel's inversion of the common view of the True, which is now to be thought and expressed not as substance, but also as subject (1). I then proceed to argue that Hegel's metaphilosophical commitment to philosophy implies the renunciation of every static and substantialistic conception not only of philosophical knowledge (2), but also of the actual world and of the human nature; therefore, this idea is incompatible with the assumption of a given form of reality as the ultimate actualisation of freedom (3).

2 Hegel's *Vorsatz*: Philosophy, Modernity, and Subjectivity

First of all, it is necessary to show how Hegel's general philosophical intention, expressed in the first sentence quoted above, is structurally linked to, and in fact only makes sense in the framework of, his understanding of his own time as "a period of transition to a new era," expressed in the second sentence quoted above. To begin with, I would like to focus on the cooperative dimension of the verb used by Hegel in the first sentence: *mitarbeiten*. Hegel is not willing to carry out an individualistic project, nor to develop a philosophical system based on a subjectively chosen principle (maybe one could see a polemical hint at Schelling's *Darstellung meines Systems der Philosophie* (my emphasis), or more generally at romantic, individualistically inspired projects). Hegel aims, on the contrary, to participate in an epochal change of paradigm (cf. Houlgate 2005, 7–8), in a collective enterprise not depending on some individual geniality, but on recognizing and seconding the time's needs. Hegel's philosophical intent responds to a historical-spiritual necessity, to a collective dimension to which the individual may only take part if he is able to conceptually recognize it. Bringing the readers of the *Phenomenology* to this recognition is one of the goals of the work. Its notorious obscurity is not the result of a linguistic and intellectual arrogant solipsism on Hegel's part: on the contrary, it derives from the necessity that the individual come to that recognition by

and for philological reasons, insofar as the text of the *Phenomenology* is indisputably reliable, which cannot be said e.g. of the *Lectures on the Philosophy of World History* or the *Lectures on the History of Philosophy*.

himself, after passing through a “way of despair” (*PhG*, 49/ *GW IX*, 56). This we may indeed call the socratic-maieutic instance of Hegel’s method.

This brings us to a second consideration. For philosophy to be actual knowing it is required that it receives the form of a scientific system: this is the final goal of philosophy. For Hegel this is a necessary process. He speaks of an external (historical-empirical) as well as of an internal (logical-systematic) necessity, which are bound to coincide in his own time and through his own contribution (cf. *PhG*, 3/ *GW IX*, 11). This point cannot be taken as a principle, as a given starting point of Hegel’s reasoning, insofar as demonstrating it is the very task of the *Phenomenology*: “To show that now is the time for philosophy to be raised to the status of a Science would therefore be the only true justification of any effort that has this aim, for to do so would demonstrate the necessity of the aim, would indeed at the same time be the accomplishing of it” (*PhG*, 3–4/ *GW IX*, 11–12). This does not mean that the previous philosophical systems were wrong in conceiving knowledge as an object of love and desire (this would be an utterly non-Hegelian thought): on the contrary, they led exactly to the point where this conception of philosophy has to go past itself (cf. Siani 2016b).

There is hence in Hegel’s project a continuity rather than a discontinuity with the former philosophical systems. The word *philo-sophia* houses a separation between knowledge and its object, between knowledge and truth. The pre-Hegelian philosophies have worked progressively at covering this distance up to the historical moment when (with Hegel) knowledge and truth are reconciled (absolute knowledge).² A famous passage explains how that last step is to be taken according to Hegel: “In my view, which can be justified only by the exposition of the system itself, everything turns on grasping and expressing the True, not only as *Substance*, but equally as *Subject*” (*PhG*, 9–10/ *GW IX*, 18).

2 The philosophers, who at this point refuse this reconciliation, understand this separation not as a coverable distance, but as a structural rift that cannot be overcome by human reason. They therefore resort to different models (immediate intuition, religious representation, aesthetic experience etc.). Now, at this very point their conception of philosophy shows itself as non- or anti-cognitivist and, in Hegel’s eyes, obsolete and anti-modern, as it limits the rights of human reason, and hence of human freedom. In fact, Hegel holds that such conceptions condemn philosophy to be non-actual knowing. The kind of knowledge, or the mental and spiritual attitude reclaimed by the philosophers who are the target of Hegel’s polemic in these pages, are not able to be effectively in touch with the new time. Therefore, Hegel’s goal of turning philosophy into actual knowing, into “*sophia*,” entails both a general philosophical intention and a critique of non-cognitivist positions: the coincidence of inner and external necessity shows that maintaining non-cognitivist positions is to be understood as a refusal to make the last step to the actuality of philosophical knowledge.

It can be noted that the radicalness and at the same time the plainness of his claim are both well expressed by the word “everything.” The truth has to be expressed as subject: this is all that is required to acknowledge the necessity of the transformation of philosophy into actual knowing, and thereby to accomplish it (plainness). At the same time, there is no other way than this one (radicalness). The claim of making philosophy actual (*wirklich*) can only be satisfied by showing that the time has come for understanding subjectivity as the very principle not only of philosophical investigation, but also of reality. Thus, in the sentence just quoted, the structural link between the philosophical and the historical transition is made explicit in and through Hegel’s idea of the subjective form of spirit and truth.

Recognising and accepting the necessity of the self-fulfilment of philosophy gives us the “*simple Notion [Begriff]*” (*PhG*, 7/ *GW IX*, 15) of the new time, but not yet its actuality. This is but the first stage of the development, which is then followed by a gradual “reconfiguration” of the living forms embedded in the new principle: “The actuality of this simple whole consists in those various shapes and forms [*Gestaltungen*] which have become its moments, and which will now develop and take shape [*Gestaltung*] afresh, this time in their new element, in their newly acquired meaning” (*PhG*, 7/ *GW IX*, 15). Science is not only the “the crown of a world of Spirit” (*PhG*, 7/ *GW IX*, 15), but also the medium through which a new spiritual world becomes actual. Subjectivity is hence the principle which seeks itself in the time and space of modernity (the word taken in its broadest Hegelian meaning, that is the European Christian world), then comes to itself when philosophy is able to recognize it (when inner and external necessity coincide), and eventually reconfigures itself in new shapes or embodiments. This is the core structure of Hegel’s conception of the modern age, which also underlies his later idea of *Sittlichkeit*.³

In the pages I am discussing, Hegel provides us with a sketch of the philosophy of history of the modern age which helps us to determine the present

3 With regard to this see another famous Hegelian statement, this time from the *Philosophy of Right*: “The right of subjective freedom ... is the pivot and centre of the difference between antiquity and modern times. This right in its infinity is given expression in Christianity and it has become the universal effective [*wirklichen*] principle of a new form of the world. Amongst the more specific shapes [*Gestaltungen*] which this right assumes are love, romanticism ...; moral convictions and conscience; and ... the other forms, some of which come into prominence in what follows as the principle of civil society and as moments in the constitution of the state, while others appear in the course of history, particularly the history of art, science, and philosophy” (*PR*, 122/ *GW XIV.1*, 110). Hence the principle of subjectivity is announced in the world by Christianity and becomes the actual principle of the new world and the very core of all its shapes.

task of science together with the actual need of the time. If the Middle Ages acknowledged the divine and the universal contents to be in another world, and early modern empiricism (Francis Bacon etc.) focused only on the present world but did not concern itself with the divine, then the present task of philosophy and the great need of the time is to find and recognize the divine as immanent in the human world, and not as a transcendent essence. The task of the new era and of its science is, in other words, to actualise the universal, whereby the practical and the theoretical aspect of this task merge together. Hegel's goal of the self-fulfilment of philosophy as science is hence anything but a purely intellectual, time-independent enterprise, inseparable as it is from a diagnosis of the epoch, of its self-consciousness, and of its needs.

To be able to think the coincidence of subject and substance means nothing less than to be able to recognise that what was thought in the way of representation as a separate, transcendent divine essence is nothing but the inner core of human subjectivity. This is the central, decisive leitmotif of the rising new epoch. The absolute as subject is the counterpart of the historical, political, spiritual need to take nothing that is positively given as absolutely valid. Overcoming the opposition of subject and substance implies thinking of the sphere of human practices, institutions, and history not as something independent of the subject as ruled or internally structured by transcendent forces, but as the action, knowledge, and decision field of human subjectivity, with its power and with its limits. A philosophy which takes nothing for granted and abandons any pre-fixed certainty is the answer to the quest for freedom of the modern age. That is why human consciousness and self-consciousness are the starting point of the *Phenomenology*. This implies "the True" being now thought of not as static, immediately "posited" given, or as an original revelation, or as an absolute tautological identity, but as the dynamic result of a process of self-position, negation, and mediation, i.e. as Spirit.

The *Phenomenology* is needed to lead the non-philosophical and even the pretended philosophical consciousness to the point of absolute knowledge. Here all the oppositions of natural consciousness and intellectual reasoning are overcome (subject/substance, subject/object, humanity/divinity, thinking/being). In this way, the *Phenomenology* leads to the starting point of the *Science of Logic*. This process entails, as already remarked, a radical act of scepticism and the inversion of natural and less natural beliefs. For us, readers of the work in the year 2020, this may seem something quite foreseen, or even not an inversion at all. But this was not the case for the readers in Hegel's own time to whom the work was directed. Of course, the Enlightenment and especially Kant's Copernican revolution had already put the subject in the foreground, but, at least in Hegel's eyes, did so at the high price of a dualistic conception

which did not recognise the identity of subject and substance, but rather confined the latter to the realm of noumena, the thought of a being which cannot be part of our experience. This led then to the anticognitivism of Jacobi and others. On the contrary, the *Phenomenology* shows that all being is together also part of experience, and in order to do this elaborates a radically new notion of experience, of *Erfahrung*, which allows the universal to be actualised.

Up to now, I have insisted on the structural connection between Hegel's general philosophical intention and his conception of the modern time, and argued that the idea of the True as subject acts both as a necessary and a sufficient condition for the actuality of this connection. In this way I hopefully shed some light on the reasons of Hegel's metaphilosophical commitment to philosophy as the only fully adequate form for modernity. In the next two sections I will touch upon the implications of this commitment for philosophy in modern time (2) and for modern *Sittlichkeit* (3).

3 The Modern Shape of Philosophy

Which shape and what task does philosophical knowledge take up, after it has come to its scientific configuration? On a first, general level, philosophy has the function and the capacity to reconcile forms of subjectivity with forms of objectivity. These function and capacity are already expressed through philosophy's belonging to absolute spirit, and are shared by the other two absolute spirit's forms, namely art and revealed religion. This general assessment, however, does not yet offer a clue as to how philosophy, and specifically philosophy as actual knowing, performs this task. Do the self-fulfilment of philosophy into actual knowing and the connected transition to a new era imply that philosophy can now, once and for all, provide an ultimate, unified, stable picture of reality?

Hegel's philosophy does not claim to give a definitive, unrevisable account of the empirical embodiments or shapes (*Gestaltungen*) in which subjective freedom is actualised.⁴ It is worth reminding in this regard that, of the four major works Hegel published in his life, only two are self-sufficient, namely the *Phenomenology* and the *Science of Logic*. Both the *Encyclopaedia* and the

4 This topic is of course related with the much-debated one of the closed, unrevisable character of Hegel's system (mostly addressed in the *Science of Logic*) and of the historical finality of a specific philosophy, i.e. the Hegelian one (mostly addressed in the introduction to the *Lectures on the History of Philosophy*). I cannot enter the debate here, but only refer to the observations by Krijnen (2010), with which I mostly agree.

Philosophy of Right are lecture handbooks, intended to be explicated orally. Everyone who is familiar with Hegel's lectures is well acquainted with their work-in-progress character, and with the fact that they change from year to year as Hegel's knowledge and reflections on history, politics, religion, art and so on also changed. This apparently merely empirical remark is ultimately connected to the fact that, as many interpreters have already noted,⁵ in Hegel's philosophy there is nothing like a fixed human nature. It cannot be fixed, for human identity (or a particular cultural identity) exists only as and in determining and constructing itself in different forms, and through giving accounts of why these particular forms count as authoritative. Now, modernity is characterized, for Hegel, by the necessity and capacity to give these accounts and committing to them by referring to spiritual and cultural forms which owe their authoritativeness to their claim to be validated on the basis of a possible, but never certain, inter-subjective and rational reconstruction and recognition. If specific configurations of the objective world cannot be conceptually and discursively reconstructed and defended, then they are not self-positions of the spirit-subject, and the destruction of untrue or obsolete configurations may be required.

Philosophy as actual knowing is therefore not the triumph of the hyper-rationalistic deduction and determination of all aspects of human subjective and objective reality. Instead, we may characterize the reconciliatory task of philosophy as actual knowing in terms of a task of control and "guarantee" of the actualization of subjective freedom in and through objective forms.⁶ Accordingly, philosophy can never determine some ultimate characteristics of a fixed human or cultural nature, let alone prescriptively or deontologically set this latter as a goal. The program of the *Phenomenology* is aimed at the dissolution of the claim to absoluteness of any however given objective configuration, be it laws, institutions etc.⁷ The principle of subjectivity remains actual only through the power to negate and reframe its own objective embodiments, not through the historical-empirical givenness of any of those embodiments,

5 See esp. Pinkard 1996 and Houlgate 2005, 12–18.

6 In this sense, I believe it would not be a mere provocation to suggest that Hegel would e.g. have appreciated as philosophical sciences the different disciplines associated with applied ethics, exactly because they strive for a rigorous philosophical grasp (and "control") of our concrete objective practices and beliefs.

7 Clearly, one can also, following Hegel, criticize Hegel himself whenever he seems to relapse into naturalistic or deterministic assumptions and prejudices, such as the ones regarding gender roles, forms of government, and non-European history. For this see also Vieweg (2012) and my discussion in Siani (2016a) (with a reply by Vieweg).

which are, taken each for itself, subject to contingency.⁸ Here is where, despite their shared content and task, philosophy as actual knowing departs from the previous two forms of the absolute spirit: both art and revealed religion are structurally tied to an empirically given material, which, to different extents, determines shapes and poses constraints to the human subject.

In order to better characterize the specific difference and the status of philosophy as actual knowing, i.e. of the only fully modernity-adequate absolute spirit form, in the conclusive part of this section I will spell out and try to prevent two opposite objections. First, it may look as if, according to my interpretation, Hegel conceived of philosophy as a tool aimed at the constant dissolution of objective contents and values, and, correspondingly, of subjectivity as a nihilist power constantly working at the destruction and reconfiguration of objectivity. This however is clearly not the case: the subjectivity Hegel has in mind is and has to be concretised and embedded in the objective and cultural institutions of its time. The point is that those institutions can now be understood as a product of subjective freedom, and actuality is hence at least potentially reconciled with human subjectivity. It would therefore be contradictory for subjectivity to constantly destroy its own embodiments in order to affirm its freedom. For a time-adequate subjectivity, this can only be the case when those embodiments *cannot* rationally be reconstructed as its own products anymore, i.e. when they are latently or patently threatening the principle of subjective freedom. In this regard, philosophy as actual knowing seems to follow a pragmatist or, more precisely, a “default and challenge model” (cf. Quante 2011, 295–297). Subjective forms or attitudes nihilistically or narcissistically aiming at the pure destruction of the objectivity *qua* objectivity are just as much the target of philosophical critique as freedom-impairing objective forms, as Hegel’s treatment of romantic irony, the beautiful soul, abstract formalism etc. both in the *Phenomenology* and the *Philosophy of Right* aptly shows.

The power, and at the same time the modesty, of this understanding of philosophy becomes even clearer if we address the reverse objection, according to which Hegel’s idea of philosophy as reconciliation of the individual subject with the objective world leads to the irrelevance of the former. In Hegel’s eyes, reconciliation and the embedment of the subject in specific objective forms do not imply the removal of difference. The very principle giving shape, actuality, and legitimation to those forms is the freedom of the subject. This applies even to Hegel’s concept of the modern state, which has often been

8 I will make some remarks on the issue of contingency in the last section. See also Henrich (1971) and Siani (2015).

criticized as an ethical, semi-totalitarian one. Hegel's *Philosophy of Right* is very clear not only that the state has to respect the particular, even arbitrary knowing and willing of the individuals, but also that it cannot achieve its universality without them. On the other hand, each particular individual has to recognize and act for the universal, through and beyond their own pursuit of particular goals:

The state is the actuality of concrete freedom. ... The result is that the universal does not prevail or achieve completion except along with particular interests and through the cooperation of particular knowing and willing; and individuals likewise do not live as private persons for their own ends alone, but in the very act of willing these they will the universal for the sake of the universal, and their activity is consciously aimed at the universal end.

PR, 235/ *GW* XIV.1, 208

Individuals are not dissolved into the unity of the universal, and the unity of the universal is not dissolved into the infinite difference of the particular individuals. On the contrary:

The principle of modern states has prodigious strength and depth because it allows the principle of subjectivity to progress to its culmination in the self-sufficient extreme of personal particularity, and yet at the same time brings it back to the substantial unity and so maintains this unity in the principle of subjectivity itself.⁹

There is hence a dialectical tension between forms of subjectivity and forms of objectivity, and between individual and universal, a tension that is necessary and even healthy, unless it becomes extreme. There needs to be a balance, of which philosophy is, in the modern world, the central pillar insofar as it works on reconciliation from both ends, with the awareness that the rationality of the actual is the result of free individual action within free universal institutions. Herein lies the full actuality of philosophy as actual knowing, based on the fact that "because ... substance is in itself or implicitly Subject, all content is its own reflection into itself" (*PhG*, 33/ *GW* IX, 39).

This new form of knowledge does not impose from outside some schema on the content, but goes deep into it, recognising its inner necessity as a moment

⁹ *PR*, 235/ *GW* XIV.1, 208; notice the use of the plural form for "modern states."

of the whole. Put short, the task of philosophy in its scientific form is to provide the space and the tools to reconcile us with or, on the contrary, criticize the objective results of a complex agency insofar as they promote or, on the contrary, hinder the actualization of subjective freedom.

4 The Philosophical Shape of Modernity

If this is the role of philosophy as actual knowing, what are the implications for Hegel's view of modernity? Is the "new era" the time of full-fledged, ultimate rational freedom? Does the transition to philosophy as actual knowing imply an end of history, and, if yes, in what sense? First of all, one can notice that there is, at least in this regard, a continuity between the view I reconstructed on the basis of the *Phenomenology* and the one we find in the later Hegelian philosophy of history. It is well known that, according to Hegel's philosophy of history, rationality plays but a little role in the actual decisions and actions of men. The two levels of the making of history and of the philosophical reading of it need to be kept well apart and not confused with each other. Or, more precisely, rationality finds its place in the world and enables us to interpret it beyond the heteronomy and heterogeneity, or even irrationality of human behaviours, and only by "exploiting" them (*List der Vernunft*). As a matter of fact, Hegel also speaks of *List*, of cunning, in the preface to the *Phenomenology*:

Science is not that idealism which replaced the dogmatism of assertion with a dogmatism of assurance, or a dogmatism of self-certainty. On the contrary, since [our] knowing sees the content return into its own inwardness, its activity is totally absorbed in the content, for it is the immanent self of the content; yet it has at the same time returned into itself, for it is pure self-identity in otherness. Thus it is the cunning [*List*] which, while seeming to abstain from activity, looks on and watches how determinateness, with its concrete life, just where it fancies it is pursuing its own self-preservation and particular interest, is in fact doing the very opposite, is an activity that results in its own dissolution, and makes itself a moment of the whole.

PhG, 33/ *GW* IX, 39–40

Thus, the transition from substance to subject announced in the *Phenomenology* finds its actuality only in a process of coming-to-be, and never in a fixed form, which would imply the return to a static substantialistic conception and

the inhibition of the power of subjectivity. Scientific philosophical knowledge does not imply the end of history in the sense of the final, irrevocable triumph of certain objective forms and institutions, but rather the end of history's being subject to transcendent, not fully knowable or accountable forces. Of course this means much more than a mere epistemic shift: it is nothing less than the actualisation of the universal which we have seen as the need of the new time. The result is not the simple removal of contingency and of differences in reality: "The power of Spirit lies rather in remaining the self-same Spirit in its externalization [*Entäußerung*]," and "knowing is this seeming inactivity which merely contemplates how what is differentiated spontaneously moves in its own self and returns into its unity" (*PhG*, 490/ *GW IX*, 431). The universal is actualised insofar as the subject finds himself in the otherness and is by himself within it: that is, is free. The subject is able to reconcile necessity and contingency by finding himself in otherness: the reconciliation is now immanent and not transcendent, the universal is actual, and not postponed to another world. Actual philosophical knowledge establishes the space and time of human history not by referring to some externally or individualistically given principle,¹⁰ but by letting history be and by tracing the actualisation of the "power of Spirit" within it.

In other words, the end of philosophy announced and carried out by the *Phenomenology* does not have its counterpart in the ultimate triumph of certain empirical forms, but rather in the opening of truly human history, i.e. historical-political-social-ethical forms as the product of the freedom of the subject. At the same time, as we saw, philosophy as actual knowing provides the us with the insight that subjective freedom is not opposed to, but in fact only actualised through its becoming objective, and with the tools to criticize both subjective and objective forms that hinder freedom thus conceived. Only such a form of knowledge is capable of recognising and letting be the full value of contingency in human history, providing us with a radically dynamic view of the world, where no given "objective" shape is "absolute" (and one should take Hegel's distinction of the two levels of spirit seriously: objective is never absolute). The admission and establishment of this space of contingency and the abdication of the claim to its philosophical determination is not the weakness, but the very strength of philosophy as actual knowing. The change of paradigm of modernity, lying in grasping and expressing the substance always also as subject, is not accomplished once and for all together with the

10 Hegel's philosophy is clearly anti-foundationalist and anti-individualistic in this sense. See also Heidemann (2008, 11–12).

announcement and philosophical proof of its necessity. The latter makes up only the first stage of the new form of the world: its actuality consists in its embodiments or shapes, which are however not a philosophical construct, but the playground of human agency.

Abbreviations of Hegel's Writings

- GW* 1968 ff. *Gesammelte Werke. Kritische Ausgabe*. Edited by Deutsche Forschungsgemeinschaft in Verbindung mit der Rheinisch-Westfälischen Akademie der Wissenschaften. Hamburg: Felix Meiner Verlag.
- PhG* 1977. *Phenomenology of Spirit*. Edited by John Niemeyer. Translated by Arnold Vincent Miller. Oxford: Oxford University Press.
- PR* 2008. *Outlines of the Philosophy of Right*. Edited by Stephen Houlgate. Translated by Thomas Malcom Knox. Oxford: Oxford University Press.

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Supplement: Hegel's Travels to Bohemia

Klaus Vieweg

After philosophical journeys of discovery into the realm of knowledge, Hegel during his Berlin years started to travel around Central Europe in search of education. These European expeditions had various goals: education, recreation, visits of sights and points of historical interest, but also reconnecting with family and friends. Perhaps most importantly, however, Hegel travelled to see art. After spending a holiday with his family on the Rügen Island in September 1819, he travelled in 1820 and 1821, both times in the autumn, twice to Dresden. In part, he travelled with Marie and Friedrich Förster, visiting also Friedrich's brother Karl Förster, literary historian and translator of Petrarch, Tasso, and Dante. During the Berlin centenary celebrations, he became curious about Raphael's work and now he decided to see in the Old Masters' Gallery in Dresden not only the Sistine Madonna but also paintings by the highly appreciated Correggio. In Dresden, one could also visit the collection of antiques and listen to Ludwig Tieck's lectures on Goldoni's work. Hegel then travelled to the picturesque Saxon Switzerland and the Pillnitz Castle. In his letters, he spoke of his odysseys, though unlike the ancient hero, he did not have to sail between the Scylla and Charybdis.

Travelling by mail coach was not so dangerous. We know little about the particulars, but this mode of travelling must have been very uncomfortable and tedious. What Hegel did share with Ulysses, though, were the tempting calls of Sirens, in his case in the form of Aunt Rosenhayn and Mrs. von Wahl.

Some may be surprised that Prague, with three visits, was the European metropolis which Hegel visited the most: in autumn 1824 twice, once on his way to Vienna and then shortly on his way back, and then again during his longer visit to Bohemia in 1829. His visits were motivated not only by desire to visit cultural and historical sights but also by family ties, because Johann Georg Haller von Hallerstein, uncle of Hegel's wife Marie, was since 1820 in charge of Regiment Kutschera in Prague. He was later promoted to major general and lieutenant field marshal.¹ In autumn 1823, Susanna von Tucher, Hegel's mother in law, also visited "Mr. Uncle," as Hegel called him, and his family in Prague. Josef Henniger, brother of Johann Georg Haller's wife Lissy von Henniger, was

¹ *Br.*, III, 51 ff., 269, 278; Vol. IV/2, 189.

a professor at the Prague University and lived probably in Schlichtings' house on the current Široká Street. Through these educated local connections, Hegel had an opportunity to learn a lot about Prague sights.²

In 1824, Hegel travelled through Dresden to the thermal spa in Teplice through Nakléřov Highland, a beautiful way into Bohemia. In Teplice, he visited Škvárovník, an artificial ruin, and praised its beauty. Further away from Teplice, we learn from Hegel's letter dated to 11 September 1824, that "everything is most lovely and then there are the springs in the hospital garden—the water of one of these springs is said to be good for the eyes and it did me a world of good. Further on in the park which belongs to the castle of Prince Clary [...] I went to take a bath in the Steinbad—a wonderful spring—and then I ate with healthy appetite."

From the nearby Doubravka mountain, Hegel had the best view of the whole Teplice town and the mountains, which form the border between Bohemia and Saxony, and even of Ústí nad Labem, which lies in a bend of the Elbe River. In local theatre, he went to see a performance of *Preziosa*, a play by Pius Alexander Wolff, whom Hegel knew from Berlin, with music by Carl Maria von Weber. On Sunday, he drank again from the springs, took a bath, went for another walk to Škvárovník, and set off, until he "saw stretching ahead the valley of Vltava River and Prague, a pleasant view swathed in pleasant fragrance" (*Br.* III, 49–51).

1 The First Impressions of Prague

Hegel was well supplied with recommendations of what he should see in Prague by his esteemed colleague Aloys Hirt, the first professor of archaeology in Berlin and founder of the Berlin collections, whose writings on the history of visual arts and classical architecture he had carefully studied. Hirt gave Hegel special recommendations as to which works of art he should try to see in Prague. The philosopher then reported on the "Old German delicacies" in the gallery of the Estates, in the Imperial library of the former Jesuit college (Clementinum), in former monastery of the Knights of the Cross, and in the cathedral of the Prague Castle (*Br.* III, 51f.).

Hegel enjoyed walking over the wonderful Charles Bridge and up the picturesque way through the Lesser Town up to the castle, reporting that the

² *Br.* Vol. III, 278, 446, Vol. IV/2, 197.

view from the bridge and from the Hradčany Castle was very beautiful (ibid.). In the famous St. Vitus Cathedral, he saw the work of old German masters (Altdeuschica) and in the gallery of the Estates, he viewed some beautiful paintings which came from the estates of some Bohemian noblemen, perhaps Count Franz von Sternberg or Count Georg Buquoi.³ One catalogue of the works includes a number of old German but also old Dutch masters, including paintings by Rubens and Rembrandt, and since 1824 also a painting by Caspar David Friedrich, perhaps his depiction of the Moon rising over the sea. It is well known that Friedrich painted Bohemian landscape, including the Ore Mountains. The collection also included interesting works by Norwegian Romantic painters and by Friedrich's friend Johann Dahl, the Classicist painter Anton Graff, Flemish painter of historical scenes Pieter Snayers, as well as Martino Altomonte, one of the founders of Baroque painting, originally from Naples, known especially a nativity scene he painted for a church in Linz.

Hegel also had the opportunity to view military maneuvers headed by Regiment Kutschera and Marie's uncle Haller von Hallerstein. He wrote that the general cordially embraced him and he would go to see him on the following day (*Br.* III, 51 f.). On 16 September, the philosopher spent a whole day at the Karlštejn Castle not far from Prague. It is also interesting to note that he wanted to visit Count Georg von Buquoi (ibid. 52.) in his Prague residence. The count was a well-known natural scientist, philosopher, and entrepreneur who perhaps also influenced Schelling's natural philosophy, contributed to Lorenz Oken's *Isis* journal, corresponded with Goethe, and was member of the scientific Leopoldina Academy. Hegel would have also been interested in making his acquaintance because of Buquoi's reputation in national economy, established by his *Theory of National Economy* (1815), a work influenced by Adam Smith and English economic theories. Not surprisingly, Hegel also went to see a play, although he was not much taken with the piece, commenting on the gist of the play somewhat derisively by words from an Austrian song "Es ist alles eins, ob ich a Geld hab oder keins," meaning he could not really care less (ibid., 53). On the way back from Vienna, Hegel stopped in Prague only briefly but in his letters, he writes again about beautiful views, noting that the proverbial Bohemian villages are no longer as alien to him as the proverb would have it.⁴

3 I would like to thank Dr. Tereza Matějčková for these references.

4 Ibid., 74. In German, "Das sind böhmische Dörfer für mich," i.e. "It's all Bohemian villages to me!" is used in the same way as "It's all Greek to me!" in English—Translator's note.

2 Hegel's Last Trip Abroad to Teplice, Prague, and Carlsbad

In late summer 1829, Hegel, by now recently elected rector, travelled for recuperation to the Bohemian spa town of Teplice, and then through Prague to Carlsbad. His mother in law Susanna was already there with her sister Aunt Rosenhayn. She wrote she hoped Hegel would visit them. "I would be so delighted to see the dear man again. In the meantime, I congratulate him on his 'magnificence'."⁵ It was well known that Hegel was elected Rector of the Berlin University. In her letter of 26 August 1829, Susanna then remarked:

I have for you, dear Marie, some good news: your dear Hegel arrived here last night, happy, satisfied, and without any accident. He ate some partridge and drank wine from Melnik with both sisters von Haller at the *Golden Hart*. The weather is supposed to be good. Today in the afternoon we plan to go to Duchcov, part of the Wallenstein estates, one of my favorite places, so today we shall go and visit it for the fourth time.⁶

In 1823, the Wallenstein (Waldstein) estates were in the hands of Georg Josef von Waldstein-Wartenberg. The Duchcov castle had some very illustrious guests in the past: Giacomo Casanova was a librarian here in the last years of his life, Tsar Alexander, the King of Prussia, and Emperor Franz I held a conference here in 1813, Beethoven gave a concert here and the place inspired his Wallenstein Sonata, and naturally, Goethe was also a guest here.

Moreover, from the point of view of history of literature, Friedrich Schiller wrote here in 1791 the first drafts of his play *Wallenstein*. It is almost certain that Hegel would have thought of Schiller while there and would have been reminded of his thoughts about the famous play (Hegel 1986, 618–620). Here we read:

[Wallenstein] prepares for himself the means for the greatest end of his time, to confer, in general, peace upon Germany, and, in particular, to acquire for himself a kingdom, and for his friends, comparable rewards. But his higher, self-sufficient soul plays with the greatest end, and, for this reason, it is without character and can grasp no end, it searches for something higher to prod it. The independent man, who is yet alive and no monk, wants to shift the guilt of determination from himself, and, if

⁵ Passages from letters by Hegel's mother in law Susanna von Tucher are quoted from Beyer 1977, here: 220.

⁶ *Ibid.*, 221.

there is nothing that can command him—there can be no such thing—then he creates for himself what will command him. Wallenstein seeks his decision, his action and his fate, in the stars (*ibid.*, 619).⁷

Hegel also notes that the important character of the astrologer Seni, which appears in the play, is motivated in this way. Hegel deals here with some ideas pertaining to his philosophy of free will and actions, which inspire his later notion of objective spirit and philosophy of law. When it comes to taking a decision, action, determination of action, responsibility, accountability, etc., Hegel diagnoses Wallenstein with “the one-sidedness of indeterminate being in the midst of nothing but determinateness.” It pertains to what Hegel in his *Elements of the Philosophy of Right* characterizes as particularization and the particular, possibly in the crucial paragraph 6 which deals with determination and particularization. Some people, he writes in a handwritten appendix to paragraph 6, perceive this particularization as a limitation, a deficiency, but it would be more fitting to apply these epithets to the unlimited (*das Unbeschränkte*). In determination or particularization, one renounces one’s freedom and, according to Hegel, rests satisfied with pure willing, resists entering the finite sphere of determination (Vieweg 2012, 61–65).

Here, Hegel may have had Wallenstein in mind throughout. The envisioned unlimited remains on an abstract level, which makes it limited and one-sided. The will can only be viewed as free when it becomes a decisive, actual will. In paragraph 12 of his *Philosophy of Law*, Hegel adds that the German language uses the expression “ent-schließen” (to decide) when it describes the transition from initial indeterminacy to determination and particularization. The thinking will, the thinking reason as will, is that which decided for finitude. A will that does not decide is no actual will and a mind that cannot cut itself off from empty totality is a dead mind. He who wants greatness, says Hegel with Goethe in mind, must limit oneself, even if it rubs the wrong way. He finds that the succumbing of the indeterminate to determinacy in Schiller’s *Wallenstein* is therefore the highest tragedy, expressed in a great and accurate way. The great, indeterminate daring of this protagonist captivates the viewer and yet it is not in the play treated in a dramatic way, that is, as determining and determined at the same time. It is only presented as a reflection. Arriving at a decision is presented as shattering, as victory of death over life, and from that one cannot walk away with a lighter heart (1986, 618 ff.).

7 Translation adapted from <https://philpapers.org/rec/HEGOW-3>.—Translator’s note.

Despite all the merry company, Hegel during his visit to Duchcov may have entertained thoughts of this tragedy. The visit reverberated even in Berlin. A couple of weeks after the visit, Hegel wrote to his friend Förster, informing him that the king of Prussia gave his, i.e. Förster's, study of Wallenstein to the Counts Waldstein (*Br.* III, 278).⁸ Hegel then spent his birthday on the 27th of August 1829 at the nearby Rosenberg Castle, known also as Graupen (Krupka), in the eponymous little town of Růžový hrádek between Teplice and Ústí nad Labem. Once again, this was a place previously visited by Goethe, who came to Růžový hrádek several times between 1810 and 1813. Hegel's mother in law wrote of a "pretty place with the most beautiful view of the whole delightful valley" where Hegel started celebrating his birthday. Susanna then reports (*ibid.*, 222 f.) that the "dear Hegel" received a warm invitation from the von Hallers to come and visit them in Prague, which he was not averse to accepting. This is why Susanna and her sister, Aunt Rosenhayn, who had a weak spot for Hegel, went on to Prague.

Aunt Rosenhayn, known also as Aunt Karoline or Rosenhainchen, had been since 1798 married to the Austrian General Major Gustav Ludwig Moritz von Rosenhayn and she visited Prague often. Susanna reported that Hegel's fondness for her sister was quite apparent. The aunt, who was seven years younger than Hegel, followed him to Carlsbad as well as to Weimar and Jena. In any case, the visit in early September 1829 was again a pleasant time for the philosopher, certainly with more walks around the Vltava River. Mr. Uncle and his wife treated him to the best of Bohemian food and wine. Hegel remarks that his hosts seemed to be as glad of his company as he was of theirs. He invited them to Berlin and gave them cards of Berlin and Teplice (*ibid.*, 269). "We were," writes the mother in law about Hegel, "very happy in his cheerful company. He is actually very pleasant. In fact, I never knew him to be other than entertaining and in good spirits. Everything seems to please him. I was proud of my dear Hegel. I can assure you that he was received by our good Georg and dear Lissi, our Prague hosts, with warm friendship and had to solemnly swear to come to Prague with you" (Beyer 1977, 222). Due to his early death, Hegel was not able to fulfil his promise but a fourth visit to Prague was planned.

Also in this letter, Susanna hints again at Hegel's fascination with her sister, Aunt Rosenhayn, using a phrase which Hegel often used: "As to whether Hegel came for my sake or because of a certain small person, I decided that I am the 'i' and she the dot above, without which the 'i' is and would be nothing" (*ibid.*).

8 Cf. Beyer 1977, 221.

Her sister, Susanna continued, took an express coach to Carlsbad, where she would await a certain well-known scholar, Hegel. In his company, she would then travel through Weimar and Jena, visit the dear Frommann and “wonder around” with the philosopher, “I am not sure about the details and I also do not want to pry into the secrets of the heart of these two dear people, but ... but ...” (ibid., 223).

Hegel travelled already on the 3rd of September to the famous Carlsbad spa. Here, too, one finds places connected with Goethe’s visits, but in connection with Hegel’s visits, one finds no memorial plaques in Teplice, Duchcov, Růžový hrádek, Prague, or Carlsbad. Naturally, Hegel’s associations with Carlsbad were not very good, since it was there that but a decade or so earlier the fateful Carlsbad Decrees had been signed, which delayed and endangered the publication of his *Philosophy of Right*. Of the town itself, however, he wrote in a letter as follows:

Carlsbad lies on the Teplá, a river about as broad as the Spree near our house, but faster and more lively. On both its banks are ... streets with rows of clean, pretty, mostly two-storied houses, behind which there rise ... the mountains. All in all, the valley ... is very charming and thanks to comfortable, well-tended paths, the hills are easily accessible and full of very pleasant footpaths.

Br. III, 270

Hegel visited the Hill of the Three Crosses (Vrch Tři kříže) and the Deer Jump (Jelení skok), a place linked to a legend about the discovery of hot springs at the time of Emperor Charles IV. The philosopher partook of the wasters and after a few days reported enormous improvement in chest pains.

In this manner he awaited both of the ladies he liked so well. Also Mrs. von Wahl, a noble from Dorpat (now Tartu, Estonia), who spent several enjoyable days with Hegel and Zelter already in Berlin, was fascinated by him and travelled to Carlsbad to meet him. Hegel met her probably through Boris von Uexküll, a private scholar from the Baltic state. In this cosmopolitan spa, Mrs. von Wahl and Hegel again climbed to the Hill of the Three Crosses, walked around, and ate well at the *Golden Shield* hotel (now Olympia). Aunt Rosenhayn arrived a little later.

Without a doubt the most exciting part of the trip to Bohemia was for Hegel the opportunity to see Schelling again. Their meeting took place by a fortunate coincidence. A certain Dr. Mitterbacher told Hegel about the presence of his old companion. The way in which the two men expressed their different impressions from the meeting is rather interesting. Schelling writes:

Imagine that yesterday, I was sitting in bath when I heard an unpleasant yet half-familiar voice asking after me. Then the unknown person said his name, and it was Hegel from Berlin ... who stopped here on a way through the town for a few days. In the afternoon, he came again, very keen to please, and uncommonly friendly, as if nothing bad every happened between us, but we did not so far get to speak on any scientific subjects, which I would not allow in any case, and he is after all a very bright person, so I spent a few hours with him in the afternoon quite pleasantly.

HBZ, 403

Hegel notes he met with an old acquaintance, Schelling, "who arrived here a few days before me, but unlike me, he came for a spa treatment ... We were both well pleased by this and were like old friends. This afternoon, I went for a walk with him and then to a cafe, where we read about the battle of Adrianople and spent an evening together" (*Br.* III, 270, 275).

After Hegel's death, his widow Marie also reported about this meeting: "Several years ago, Hegel met with Schelling in Carlsbad in the spirit of old, warm friendship, as he said. But this did not renew the old friendship on Schelling's part—Hegel was cordial, cheerful, and would have liked to settle all differences. He could not bear a grudge" (*Ibid.*, 445). Schelling, Bavarian privy councillor and head of the Royal Academy of Sciences, was staying in the luxurious hotel *Zu den Staffeln auf der Wiese*, while the rector of the Berlin University chose a less opulent, medium-range *Gasthof zum Goldenen Löwen*. Nevertheless, according to Henry Crabb Robinson, Schelling was "dethroned from his metaphysical rank by Hegel" and Hegel was now the most important philosopher in Germany. This gave rise to a delicate situation, partly reflected in the testimonies above. Hegel moreover invited Schelling to write a contribution on the philosophy of religion for the *Kritische Jahrbücher*, and still Schelling kept to "his old proud self" (*Br.* III, 270; *Br.* IV/2, 72). Despite all this, they fondly thought of their old companion Niethammer and Hegel "always held Schelling, his former companion and great spirit, in high respect" (Laube 1837, 410). On his way back, Hegel again stopped in Thüringen to visit "the eighty-years old youngster" Goethe in Weimar and his friends in Jena. In Goethe's diary, we learn of his visit by "Professor Hegel and Mrs. General von Rosenhayn" (Nicolin 1970, 403). The visit to Czech spas was the last longer trip Hegel had undertaken.

Prague is doubtless a wonderful and excellent place to speak about Hegel, since on the bottom of Vltava, even the rocks are said to wander.

Translated by Anna Pilátová

Abbreviations

- Br* Hegel, Georg Wilhelm Friedrich, 1953. *Briefe von und an Hegel*. Edited by Johannes Hoffmeister, 1-IV, Hamburg: Felix Meiner Verlag.
- HBZ* Nicolin, Günther (ed.). 1970. *Hegel in Berichten seiner Zeitgenossen*. Hamburg: Felix Meiner Verlag.

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